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No. 73

Supreme Court of the United States

October Term, 1950

PHILLIPS PETROLEUM COMPANY, a corporation,
Appellant,
VERSUS
THE STATE OF OKLAHOMA *et al.*,
Appellees.

Appeal from the Supreme Court of the State of Oklahoma

BRIEF OF APPELLEES

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OCTOBER, 1950.

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No. 73

Supreme Court of the United States

October Term, 1950

PHILLIPS PETROLEUM COMPANY, a corporation,

Appellant,

VERSUS

THE STATE OF OKLAHOMA; THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA; PEERLESS OIL AND GAS COMPANY, a corporation; COMMISSIONERS OF THE LAND OFFICE OF THE STATE OF OKLAHOMA; TEXAS COUNTY LAND AND ROYALTY OWNERS ASSOCIATION, and CITIES SERVICE GAS COMPANY, a corporation,

Appellees.

Appeal from the Supreme Court of the State of Oklahoma

BRIEF OF APPELLEES

Herein, Phillips Petroleum Company, a corporation, will be referred to as "Phillips"; Cities Service Gas Company will be referred to as "Cities"; the Corporation Commission of Oklahoma will be referred to as "Commission"; the Peerless Oil & Gas Company will be referred to as "Peerless"; and the Guymon-Hugoton Gas Field will be referred to as "Hugoton Field."

Where emphasis is used in quotations, the emphasis will be ours unless otherwise noted, and where figures in parenthesis are used, they will refer to the printed record.

STATEMENT OF THE CASE

These proceedings were commenced by the filing with the Commission of an application by Peerless for an order requiring the Cities to make a connection to two wells owned by Peerless, and to take natural gas ratably from said two wells. The application further prayed that the Commission fix the terms and conditions of the taking of natural gas from said two wells, including the price at which said gas should be taken. The application further prayed that the Commission fix the price for natural gas for the entire Hugoton Field. Notice of the hearing was duly given as provided by law.

After many days of hearings, the Commission issued its Order No. 19514, a copy of which is attached to this Brief and marked Appendix "A," fixing a price of 7¢ per 1,000 cubic feet for all natural gas produced in the Hugoton Field and prohibiting the production of natural gas where such gas was to be sold at the wellhead, at a price less than 7¢ per 1,000 cubic feet. Said order further provided that the gas be measured at a pressure of 14.65 pounds absolute pressure per square inch.

Pursuant to this application, the Commission also issued its Order No. 19515, fixing the terms and conditions

upon which the Cities should take gas from the two wells in question. A copy of said order is attached to this Brief and marked Appendix "B."

During the pendency of the proceedings, Peerless and Cities had, by stipulation, agreed that Cities would make a connection to the two wells and take gas ratably upon such terms and conditions as might thereafter be fixed by the Commission. During the pendency of the proceeding, the Commissioners of the Land Office and the Texas County Royalty Owners Association intervened in the proceeding and were made parties thereto.

On December 9, 1946, after exhaustive hearings, the Commission issued the two orders complained of. The orders by their terms became effective as of January 1, 1947.

Thereafter on January 7, 1947, Phillips filed its "Application to Modify Orders Numbered 19514 and 19515." Pursuant to a hearing on this application, the Commission issued its Order No. 19702 on February 4, 1947, denying Phillips' application. Attached to this Brief and marked Appendix "C" is a copy of this order.

The Supreme Court of Oklahoma consolidated the appeals of Phillips and Cities for the purpose of briefing and oral argument, and thereafter handed down its opinion in the consolidated cases. A copy of said opinion is attached hereto and marked Appendix "D."

From the opinion of the Supreme Court of Oklahoma, Phillips has appealed to this Court, being Case No. 73 of

the October, 1950 term, and Cities has likewise appealed to this Court in Case No. 153 of the October, 1950 term.

Since the questions involved in the two appeals are similar, appellees in this case adopt the statement of the case, set forth in Brief of appellees in the Cities case. Likewise appellees adopt the condensed statement of the evidence found in the Brief of appellees in the Cities' appeal and in addition thereto further discuss the evidence under Proposition No. 5 in this Brief.

ARGUMENT AND AUTHORITIES

PROPOSITION I

The Supreme Court of the United States is bound by the interpretation placed upon the state statute by the Supreme Court of the state.

The statutes of the State of Oklahoma construed by the Supreme Court of the State of Oklahoma in its opinion (895), for the convenience of this Court are set out as follows:

The Natural Gas Act of 1913, Title 52, O.S.A., Sections 231 to 233, inclusive, read as follows:

Section 231:

> "All natural gas under the surface of any land in this state is hereby declared to be and is the property of the owner or gas lessees, of the surface under which gas is located in its original state." (Laws 1913, Ch. 198, p. 439, Sec. 1).

Section 232:

"Any owner, or oil and gas lessee, of the surface, having the right to drill for gas shall have the right to sink a well to the natural gas underneath the same and to take gas therefrom until the gas under such surface is exhausted. In case other parties, having the right to drill into the common reservoir of gas, drill a well or wells into the same, then the amount of gas each owner may take therefrom shall be proportionate to the natural flow of his well or wells to the natural flow of the well or wells of such other owners of the same common source of supply of gas, such natural flow to be determined by any standard measurement at the beginning of each calendar month; provided, that not more than twenty-five per cent of the natural flow of any well shall be taken, unless for good cause shown, and upon notice and hearing the Corporation Commission may, by proper order, permit the taking of a greater amount. *The drilling of a gas well or wells by any owner or lessee of the surface shall be regarded as reducing to possession his share of such gas as is shown by his well.*" (Laws 1913, Ch. 198, p. 440, Sec. 2).

Section 233:

"Any person, firm or corporation, taking gas from a gas field, except for purposes of developing a gas or oil field, and operating oil wells, and for the purpose of his own domestic use, shall take ratably from each owner of the gas in proportion to his interest in said gas, upon such terms as may be agreed upon between said owners and the party taking such, or in case they cannot agree at such a price and upon such terms as may be fixed by the Corporation Commission after notice and hearing; provided, that each owner shall be required to deliver his gas to a common point of delivery on or adjacent to the surface overlying such gas." (Laws 1913, Ch. 198, p. 440, Sec. 3).

The 1915 Ratable Taking Act, Title 52, O.S.A., Sections 239, 240 and 243, read as follows:

Section 239:

"Whenever the full production from any common source of supply of natural gas in this state is in excess of the market demands, then any person, firm or corporation, having the right to drill into and produce gas from any such common source of supply, may take therefrom only such proportion of the natural gas that may be marketed without waste, as the natural flow of the well or wells owned or controlled by any such person, firm or corporation bears to the total natural flow of such common source of supply having due regard to the acreage drained by each well, so as to prevent any such person, firm or corporation securing any unfair proportion of the gas therefrom; provided, that the Corporation Commission may by proper order, permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable. *The said commission is authorized and directed to prescribe rules and regulations for the determination of the natural flow of any such well or wells, and to regulate the taking of natural gas from any or all such common sources of supply within the state, so as to prevent waste, protect the interest of the public, and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another.*" (Laws 1915, Ch. 197, Sec. 4).

Section 240:

"Every person, firm or corporation, now or hereafter engaged in the business of purchasing and selling natural gas in this state, shall be a common purchaser thereof, and shall purchase all of the natural gas which may be offered for sale, and which may reasonably be reached by its trunk lines, or gathering lines without discrimination in favor of one producer as against another, or in favor of any one source of supply as against another save as authorized by the Corporation Commission after due notice and hearing; but if any such person, firm or corporation, shall be unable to

purchase all the gas so offered, then it shall purchase natural gas from each producer ratably. *It shall be unlawful for any such common purchaser to discriminate between like grades and pressures of natural gas,* or in favor of its own production, or of production in which it may be directly or indirectly interested, either in whole or in part, but for the purpose of prorating the natural gas to be marketed, such production shall be treated in like manner as that of any other producer or person, and shall be taken only in the ratable proportion that such production bears to the total production available for marketing. *The Corporation Commission shall have authority to make regulations for the delivery, metering and equitable purchasing and taking of all such gas and shall have authority to relieve any such common purchaser, after due notice and hearing, from the duty of purchasing gas of an inferior quality or grade.*" (Laws 1915, Ch. 197, Sec. 5).

Section 243:

"*The Corporation Commission shall have authority to make regulations for the prevention of waste of natural gas,* and for the protection of all natural gas, fresh water, and oil bearing strata encountered in any well drilled for oil or natural gas, *and to make such other rules and regulations,* and to employ or appoint such agents, with the consent of the Governor, *as may be necessary to enforce this Act.*" (Laws 1915, Ch. 197, Sec. 8).

The opinion of the Supreme Court of Oklahoma interpreted the above sections of the Oklahoma statute as authorizing the Commission to "fix the price at which natural gas may be produced and taken from the field under the circumstances and in the manner therein stated," and held that said statutes in authorizing the Commission to prevent waste, protect the interests of the public and all those

having a right to produce therefrom, "by necessary implication, includes the power to employ such means as may be reasonably necessary to the accomplishment of the declared purposes, and includes the power to fix the price consideration in the taking of gas when found necessary to the attainment of such ends."

Thus the Supreme Court of Oklahoma has held that the statutes hereinabove set out are sufficiently broad to authorize the State of Oklahoma through its regulatory agency, to fix the price of natural gas produced, and taken from a natural gas field, and to fix a unit of measurement for such taking.

This Court in a long line of decisions, has established the rule to be that the interpretation of the state statutes by the Supreme Court of the State is binding upon this Court.

In *Klinger* v. *State of Missouri*, 80 U.S. 635, 637, this Court said:

> "Where it appears by the record that the judgment of the state court might have been based either upon a law which would raise a question of repugnancy to the Constitution, laws or treaties of the United States, or upon some other independent ground, and it appears that the court did, in fact, base its judgment on such independent ground, and not on the law raising the federal question, this court will not take jurisdiction of the case, even though it might think the position of the state court an unsound one."

In *Patterson* v. *People of the State of Colorado*, 205 U.S. 454, 461, this Court said:

"But, in general, the decision of the court upon a question of law, however wrong and however contrary to previous decisions, is not an infraction of the 14th Amendment merely because it is wrong or because earlier decisions are reversed."

In *King* v. *State of West Virginia*, 216 U.S. 92, 100, this Court said:

"But the construction and effect of that decree, how far it bound the state, and whether or not it bound parties subsequently coming in, were matters of state procedure alone. The cases remained within the jurisdiction of the state court, and if, by local practice, the lower or higher court had power to change an earlier decree in the cause by direct order, or indirectly, by construction, which latter we by no means intimate was done, it is a matter that cannot be complained of here. See *Patterson* v. *Colorado*, 205 U.S. 454, 460, 51 L. ed. 879, 880, 27 Sup. Ct. Rep. 556, 10 A. & E. Ann. Cas. 689."

In *A., T. & S. F. Ry. Co.* v. *Railroad Commission of the State of California*, 283 U.S. 380, 390, this Court said:

"The decision of the state court is conclusive so far as the constitution and laws of the state are concerned. The state Commission has acted within the power conferred upon it. The only questions before us are those arising under the Federal Constitution and the Interstate Commerce Act."

In *Quong Ham Wah Company* v. *Industrial Accident Commission*, 255 U.S. 445, 448, this Court said:

"To reverse the judgment so rendered this writ of error is prosecuted. All the assignments and contentions made rest in their last analysis upon the assumption that, despite the construction of the statute made by the court below, it still must be here treated as repugnant to the Constitution because operating the

discrimination originally complained of. But it is elementary that this court is without authority to review and revise the construction affixed to a state statute as to a state matter by the court of last resort of the state.

> "*Commercial Bank* v. *Buckingham*, 5 How. 317, 342, 12 L. ed. 169, 181;
>
> *Johnson* v. *New York Life Ins. Co.*, 187 U.S. 491, 496, 47 L. ed. 273, 275, 23 Sup. Ct. Rep. 194;
>
> *Ross* v. *Oregon*, 227 U.S. 150, 162, 57 L. ed. 458, 463, 33 Sup. Ct. Rep. 220, Ann. Cas. 1914C, 224;
>
> *Ireland* v. *Woods*, 246 U.S. 323, 330, 62 L. ed. 745, 750, 38 Sup. Ct. Rep. 319;
>
> *Stadelman* v. *Miner*, 246 U.S. 544, 62 L. ed. 875, 38 Sup. Ct. Rep. 359;
>
> *Erie Ry. Co.* v. *Hamilton*, 248 U.S. 369, 371, 372, 63 L. ed. 307, 308, 39 Sup. Ct. Rep. 95.

"It is hence obvious that the proposition upon which alone jurisdiction to entertain the writ can be based is so wanting in foundation as to be frivolous, and therefore to impose upon us the duty to dismiss the cause for want of power to entertain.

> "*Farrell* v. *O'Brien (O'Callaghan* v. *O'Brien)*, 199 U.S. 89, 100, 50 L. ed. 101, 107, 25 Sup. Ct. Rep. 727;
>
> *Goodrich* v. *Ferris*, 214 U.S. 71, 79, 53 L. ed. 914, 917, 29 Sup. Ct. Rep. 580;
>
> *Toop* v. *Ulysses Land Co.*, 237 U.S. 580, 583, 59 L. ed. 1127, 1128, 35 Sup. Ct. Rep. 739;
>
> *Sugarman* v. *United States*, 249 U.S. 182, 184, 63 L. ed. 550, 551, 39 Sup. Ct. Rep. 191;

Berkman v. United States, 250 U.S. 114, 118, 63 L. ed. 877, 884, 39 Sup. Ct. Rep. 411;

Piedmont Power & Light Co. v. Graham, 253 U.S. 193, 64 L. ed. 855, 40 Sup. Ct. Rep. 453."

In *Brinkerhoff-Faris Trust & Savings Company v. Hill*, 281 U.S. 673, 680, this Court said:

"It is true that the courts of a state have the supreme power to interpret and declare the written and unwritten laws of the state; that this court's power to review decisions of state courts is limited to their decisions on Federal questions;

"*Kryger v. Wilson*, 242 U.S. 171, 176, 61 L. ed. 229, 231, 37 Sup. Ct. Rep. 34;

Mt. St. Mary's Cemetery Assn. v. Mullins, 248 U.S. 501, 503, 63 L. ed. 383, 386, 39 Sup. Ct. Rep. 173;

Quong Ham Wah Co. v. Industrial Accident Commission, 255 U.S. 445, 448, 65 L. ed. 723, 724, 41 Sup. Ct. Rep. 373;

Fox River Paper Co. v. Railroad Commission, 274 U.S. 651, 655, 71 L. ed. 1279, 1283, 47 Sup. Ct. Rep. 669,

"and that the mere fact that a state court has rendered an erroneous decision on a question of state law, or has overruled principles or doctrines established by previous decisions on which a party relied, does not give rise to a claim under the Fourteenth Amendment or otherwise confer appellate jurisdiction on this court.

"*Central Land Co. v. Laidley*, 159 U.S. 103, 112, 40 L. ed. 91, 94, 16 Sup. Ct. Rep. 80;

Patterson v. Colorado, 205 U.S. 454, 461, 51 L. ed. 879, 880, 27 Sup. Ct. Rep. 556, 10 Ann. Cas. 689;

Willoughby v. *Chicago*, 235 U.S. 45, 50, 59 L. ed. 123, 126, 35 Sup. Ct. Rep. 23;

O'Neil v. *Northern Colorado Irrig. Co.*, 242 U.S. 20, 26, 27, 61 L. ed. 123, 128, 129, 37 Sup. Ct. Rep. 7;

Dunbar v. *New York*, 251 U.S. 516, 519, 64 L. ed. 384, 385, 40 Sup. Ct. Rep. 250;

Rooker v. *Fidelity Trust Co.*, 261 U.S. 114, 118, 67 L. ed. 556, 563, 43 Sup. Ct. Rep. 288;

Tidal Oil Co. v. *Flanagan*, 263 U.S. 444, 450, 68 L. ed. 382, 385, 44 Sup. Ct. Rep. 197;

American Ry. Exp. Co. v. *Kentucky*, 273 U.S. 269, 71 L. ed. 639, 641, 47 Sup Ct. Rep. 353."

See also:

Williams v. *Kaiser*, 323 U.S. 471;

International Union, U. A. W., A. F. of L. Local 232, 336 U.S. 245;

Oklahoma Tax Comm. v. *Texas Company, and Oklahoma Tax Comm.* v. *Magnolia Petroleum Company*, 336 U.S. 342;

S. R. A., Inc. v. *State of Minnesota*, 327 U.S. 558.

It therefore seems that it is now a settled rule of law that this Court is bound by the interpretation of the Oklahoma Statutes placed thereon by the Supreme Court of the State. Our Supreme Court specifically held that Title 52, O.S.A., Sec. 233, *supra*, gave the Commission authority to fix the price at which natural gas may be produced and taken from the Hugoton Gas Field under the circumstances and in the manner stated in the order of the Commission. The Supreme Court further held that 52 O.S.A. 239, *supra*, granted the Commission power,

> "* * * to prevent waste, protect the interest of the public and all of those having a right to produce therefrom, * * *,"

which power by necessary implication included the power to employ such means as may be reasonably necessary to the accomplishment of the declared purposes and included the power to fix the price consideration in the taking of gas when found necessary to the attainment of such ends. In this case the Commission specifically found in its orders that waste was being committed because of the low price for which natural gas was being sold and that discrimination was being practiced in the field in which there was a hodge podge of prices being paid by various purchasing companies.

We suggest that this Court is bound by the interpretation of the order of the Commission and of the statutes of the State of Oklahoma made by the Supreme Court of our State in its opinion in this case.

PROPOSITION II

By entering the state and there engaging in the business of buying and holding gas leases, drilling and operating gas wells, all after the enactment of the statutes, which conditioned its right to do that business in the state, appellant accepted the terms and provisions of those statutes, and is therefore barred from questioning their constitutionality.

Appellant is a foreign corporation. Oklahoma had the right for any reason or without reason to prohibit it from doing any but an interstate business therein.

Asbury Hospital v. *Cass County*, 326 U.S. 207;

Wheeling Steel Corp. v. *Glander*, 337 U.S. 562;

Hanover Fire Insurance Co. v. *Carr*, 272 U.S. 494;

St. Clair v. *Cox*, 106 U.S. 350;

Hemphill v. *Orloff*, 277 U.S. 537;

Orient Ins. Co. v. *Daggs*, 172 U.S. 557;

State of Washington ex rel. v. *Superior Court*, 289 U.S. 361,

or to prescribe the conditions upon which it could do so.

Lincoln Nat. Life Ins. Co. v. *Read*, 325 U.S. 673;

Horn Silver Min. Co. v. *New York State*, 143 U.S. 305;

Connecticut Mutual Life Ins. Co. v. *Spratley*, 172 U.S. 602;

Paul v. *Virginia*, 8 Wall. 168;

Hanover Fire Ins. Co. v. *Carr*, *supra*;

Lafayette Ins. Co. v. *French*, 59 U.S. 404;

St. Clair v. *Cox*, *supra*;

Orient Ins. Co. v. *Daggs*, *supra*;

Atlantic Refining Co. v. *Virginia*, 302 U.S. 22.

As to appellant, Oklahoma prescribed those conditions in 1913 and 1915. After the enactment of the Acts, Phillips entered the State, obtained a permit, and commenced the business of acquiring, holding and drilling gas leases, producing gas, and taking gas from a gas field.

That constituted an acceptance of the conditions upon which that privilege was granted, and appellant is exercis-

ing the privilege today. It has acquired and owns leases upon large tracts of land in the Hugoton field and in other fields of the State. It has drilled and is drilling wells thereon, and has produced and is producing gas therefrom, all being acts which the State had the right to forbid a corporation, either foreign or domestic, from doing, or to prescribe the conditions upon which they could do them.

In *The Pipe Lines Cases*, 234 U.S. 548, this Court held that the Hepburn Act, though not compelling existing corporations engaged in interstate transportation of oil to continue in operation, nevertheless forbade them to continue to transport oil purchased by them from others except as common carriers; and as to pipe lines constructed after the passage of that Act, the Court said at Page 561:

> "So far as the statute contemplates future pipe lines and prescribes conditions upon which they may be established there can be no doubt that it is valid."

Also, in *Pierce Oil Corp.* v. *Phoenix Refining Co.*, 259 U.S. 125, 128, this Court said:

> "By accepting the privilege it (appellant) voluntarily consented to be bound by the conditions attached to it, and, while enjoying the benefits of that privilege, it will not be heard to complain that an order, plainly within the scope of statutes in effect when it entered the state, is unconstitutional."

That holding has been cited and followed in many cases.

See:

United States v. *Traugott Schmidt & Sons* (D.C.), 2 Fed.(2d) 290;

Dunn v. *Fort Bend County et al.* (D.C.), 17 Fed. (2d) 329;

Eichholz v. *Hargus et al.* (D.C.), 23 Fed. Supp. 587;

Valvoline Oil Co. v. *United States*, 25 Fed. Supp. 460;

Henderson v. *Twin Falls County*, 59 Ida. 119, 80 Pac. (2d) 801, 810;

Byard v. *Commissioner of Taxation*, 209 Minn. 219, 296 N.W. 10;

Louisiana Ry. & Nav. Co. v. *State* (Tex. Civ. App.), 298 S.W. 462, 467;

Assessment of Champlin Refining Co., 129 Okla. 166;

Fitzsimmons v. *Rauch*, 195 Okla. 529, 532.

If appellant had expressly contracted with the State that, in consideration of its admission, it would recognize and conform to those statutes, unquestionably it could not attack their validity. An implied contract, however, is equally binding, and appellant's acceptance and exercise of the privilege granted upon the conditions embodied in the statutes constituted such implied contract and effectually estops it.

That means that appellant cannot question the constitutionality of the acts, requiring it to take ratably, and authorizing the Commission to fix the price therefor.

Of course, if the Commission, in requiring appellant to take ratably, had fixed the price so high as to entail loss upon it or prevent it from making a profit, it would not be precluded by its acceptance of the statutes from assert-

ing that the order deprives it of property without due process, any more than a public utility, under an admitted duty to serve and whose rates are subject to regulation, is precluded from attacking a rate fixed as confiscatory. But at present we are concerned only with the power to require ratable taking. Order No. 19702 by the Commission finds that the appellant is complying with the price provisions of Orders Numbered 19514 and 19515.

PROPOSITION III

A state may constitutionally fix a price for natural gas.

In the opinion (895), appealed from in this case, our court held:

> "3. Price control, like any other form of regulation, is unconstitutional only if arbitrary, discriminatory, or demonstrably irrelevant to the policy which the Legislature is free to adopt, and hence an unnecessary and unwarranted interference with individual liberty. A price fixing order of the Corporation Commission made pursuant to statute is to be tested by the same standards.
>
> "4. The due process and equal protection provisions of the Federal and State Constitutions do not preclude the state, in the exercise of its power, to preserve the correlative rights of producers of natural gas from a common reservoir, from requiring one either to shut down its wells or take ratably from the other producer who has no outlet and pay the established field price for the gas so taken, such being but a practical or feasible alternative consistent with production by both to protect the one from drainage by the other."

The State of Oklahoma has for many years under its police power exercised supervisory control over the production of oil and gas in Oklahoma and statutes enacted for that purpose have been uniformly upheld.

In re: Lovell Crescent Field, Logan County, Oklahoma, 178 Pac.(2d) 876;

Peppers Refining Company v. *Corporation Commission*, 179 Pac.(2d) 899;

Carey, Rec. v. *Corporation Commission*, 33 Pac.(2d) 788;

Oklahoma Natural Gas Company v. *Corporation Commission et al.*, 216 Pac. 917;

Oklahoma Natural Gas Co. v. *State*, 161 Okla. 104, 17 Pac.(2d) 488;

Republic Natural Gas Co. v. *State et al.*, 180 Pac.(2d) 1009;

Russell v. *Walker et al.*, 160 Okla. 145, 15 Pac.(2d) 114;

In re: Application of Jackson et al., 179 Okla. 577, 66 Pac.(2d) 1101;

Pierce Oil Corporation v. *Phoenix Refining Co. et al.*, 79 Okla. 36, 190 Pac. 857;

Croxton v. *State*, 186 Okla. 249, 97 Pac.(2d) 11;

Patterson Oil & Gas Company v. *Stanolind Oil & Gas Co.*, 182 Okla. 155, 77 Pac.(2d) 83;

H. F. Wilcox Oil & Gas Co. v. *State*, 169 Okla. 89, 19 Pac.(2d) 347;

Grison Oil Corp. v. *Corporation Commission et al.*, 186 Okla. 548, 99 Pac.(2d) 134.

And beginning with *Ohio Oil Company* v. *Indiana*, 177 U.S. 190, the Supreme Court of the United States has in

a long line of decisions upheld the jurisdiction of the various States to regulate the oil and gas industry in the prevention of waste, the protection of correlative rights of the interested parties and the protection of the public interests.

Champlin Refining Company v. *Corporation Commission of Oklahoma et al.*, 286 U.S. 210;

Pierce Oil Corporation v. *Phoenix Refining Co.*, 259 U.S. 125;

The Pipe Line Cases, 234 U.S. 541;

Bandini Petroleum Co. v. *Superior Court of the State of California*, 284 U.S. 7, 76 L. ed. 136;

Patterson v. *Stanolind Oil & Gas Company*, 305 U.S. 375, 83 L. ed. 231;

Hunter v. *McHugh*, 320 U.S. 22, 88 L. ed. 5;

Thompson v. *Consolidated*, 300 U.S. 55, 81 L. ed. 510;

Republic Natural Gas Co. v. *State*, 334 U.S. 662, 92 L. ed. 1212.

This Court said in *Republic Gas Company* v. *State et al.*, 334 U.S. 62, in an opinion by four Justices of this Honorable Court, and agreed to in principle by a fifth Justice, as follows at Page 94:

> "* * * In a line of cases beginning a half century ago with *Ohio Oil Co.* v. *Indiana*, 177 U.S. 190, 44 L. ed. 729, 20 S. Ct. 575, this court has upheld various types of state regulatory schemes designed to prevent waste and to protect the 'co-equal rights' of the several owners of a common source of supply. Those cases clearly recognize that the state regulation may be justified on alternative grounds, either to prevent waste or to adjust private correlative rights."

This opinion further held that the State could require the Republic Natural Gas Company to pay the Peerless Oil & Gas Company for the gas drained from underneath Peerless' leases and certainly if the State could require payment for drainage, then it would have jurisdiction to fix the price of the gas that was drained. If it could have fixed the price of gas in that instance then surely it has the right in this instance to fix the field-wide price for gas, and the Supreme Court of Oklahoma in its opinion in the instant case said:

> "We think it is clear that the due process and equal protection provisions of the Federal and State Constitutions do not preclude the state, in the exercise of its power to preserve the correlative rights of producers of natural gas from a common pool, from requiring one either to shut down its wells or take ratably from the other producer who has no outlet under such terms as the parties may agree upon; or in default of agreement, to take upon such terms and price as may be fixed by the Corporation Commission consistent with equality in returns for gas taken in the field. Such device is but a practical or feasible alternative consistent with production by both to protect the one from drainage by the other.
>
> "The Commission's order, made under the provisions of Sec. 233, *supra*, directing that Cities Service as a condition of its further taking of gas from the field, should take ratably from the wells of Peerless, is readily sustainable. The portion of the order directing payment for the gas so taken at not less than 7¢ per thousand cubic feet at the wellhead rests upon the Commission's general order prohibiting the taking of gas from the producing structures or formations in the field for a price at the wellhead of less than 7¢ per thousand cubic feet.

"In 1915 provision was made for regulation of the extraction of natural gas not only to prevent excessive drainage as between producers but for the prevention of waste and for the protection of the interest of the public and the interest of all those having a right to take from a common reservoir.

"It was provided, Laws 1915, Ch. 197, § 4, 52 O.S. 1941, § 239, that when the full production from a common source of supply of natural gas is in excess of the market demands, a producer from such common source of supply may take therefrom only such proportion as may be marketed without waste, and in such proportion as the natural flow of the well or wells of such producer bears to the total natural flow of the field, having due regard to the acreage drained by each well; provided that the Corporation Commission may permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable. The statute provides that 'the said commission is authorized and directed * * * to regulate the taking of natural gas from any or all such common sources of supply within the state, so as to prevent waste, protect the interest of the public, and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one source of supply as against another."

The Commission has long exercised its power of fixing prices at which natural gas may be produced and taken (see opinion in the record, Page 895). As early as 1920 after the prescribed notice and hearing, the Commission fixed the price of 9¢ per MCF for gas in the Cushing Field, and in 1944, acting specifically in view of the national emergency, the Commission, after notice and hearing, authorized the taking of natural gas for the manufacture of carbon black and fixed the price to be paid for the gas so

produced and used, and it was specified that the continued effectiveness of the permit should depend upon the maintaining of the fixed price. Jurisdiction to fix the price of natural gas has been exercised ever since the passage of the 1913 Natural Gas Act, and the 1915 ratable taking statute.

The language used by this Court in interpreting the Federal Natural Gas Act is of some assistance to us in determining whether or not the State of Oklahoma has jurisdiction to fix the price of natural gas before it passes through the processing plants and enters into the interstate pipe line.

In *Interstate Natural Gas Co.* v. *Federal Power Commission*, 331 U.S. 682, 690, this Court held as follows:

> "In denying the Federal Power Commission jurisdiction to regulate the production or gathering of natural gas, it was not the purpose of Congress to free companies such as petitioner from effective public control. The purpose of that restriction was, rather, to preserve in the states powers of regulation in areas in which the states are constitutionally competent to act. * * * clearly, among the powers thus reserved to the states is the power to regulate the physical production and gathering of natural gas in the interests of conservation or of any other consideration of legitimate local concern."

In a most recent case, being *Panhandle Eastern Pipe Line Company* v. *Public Service Commission of Indiana*, 332 U.S. 507, this Court held that said State regulation was not precluded by the enactment of the Natural Gas Act, and said at Page 521:

> "Congress' action moreover was an unequivocal recognition of the vital interests of the states and their

people, consumers and industry alike, in the regulation of rates and service. Indiana's interest in appellant's direct sales is obvious. That interest is certainly not less than the interest of California and her people in their protection against the evil effects of wholly unregulated sale of insurance interstate. *Robertson* v. *California*, 328 U.S. 440, 90 L. ed. 1366, 66 S. Ct. 1160. Not only would industrial consumers in most instances go without protection as to rates and service other than that supplied by competition from other fuels, but the state's regulatory system would be crippled and the efforts of the Indiana Commission seriously hampered in protecting the interests of other classes of users equally if not more important.

"These considerations all would lead to the conclusion that the states are not made powerless to regulate the sales in question by any supposed necessity for uniform national regulation but that on the contrary the matter is of such high local import as to justify their control, even if Congress had remained wholly silent and given no indication of its intent that state regulation should be effective. But in this case, in addition to those considerations taken independently, the policy which we think Congress has clearly delineated for permitting and supporting state regulation removes any necessity for determining the effect of the commerce clause independently of action by Congress and taken as operative in its silence."

In the light of the foregoing decisions it is said without question that the production and distribution of natural gas is a business more affected with the public interests than the production and distribution of milk or raisins, yet in respect to these two commodities this Court has held price fixing Acts and regulations to be valid.

In *Nebbia* v. *New York*, 291 U.S. 502, this Court upheld an Act passed by the State of New York, which

conferred jurisdiction upon a regulatory board of that State to fix the price of milk under certain conditions. In discussing the types of businesses that are affected with the public interest this Court said at Page 510:

> "Under our form of government the use of property and the making of contracts are normally matters of private and not of public concern. The general rule is that both shall be free of governmental interference. But neither property rights nor contract rights are absolute; for government cannot exist if the citizen may at will use his property to the detriment of his fellows, or exercise his freedom of contract to work them harm. Equally fundamental with the private right is that of the public to regulate it in the common interest. As Chief Justice Marshall said, speaking specifically of inspection laws, such laws for 'a portion of that immense mass of legislation, which embraces everything within the territory of a state. * * * all which can be most advantageously exercised by the states themselves. Inspection laws, quarantine laws, health laws for regulating the internal commerce of a state. * * * are component of this mass.' "

This Court further said:

> "The Constitution does not guarantee the unrestricted privilege to engage in a business or to conduct it as one pleases. Certain kinds of business may be prohibited; and the right to conduct a business, or to pursue a calling, may be conditioned. *Regulation of a business to prevent waste of the state's resources may be justified.* And statutes prescribing the terms upon which those conducting certain businesses may contract, or imposing terms if they do enter into agreements, are within the state's competency.
>
> "Legislation concerning sales of goods, and incidentally affecting prices, has repeatedly been held valid. In this class fall laws forbidding unfair competition by the charging of lower prices in one locality than

those exacted in another, by giving trade inducements to purchasers, and by other forms of price discrimination. The public policy with respect to free competition has engendered state and federal statutes prohibiting monopolies, which have been upheld. On the other hand, where the policy of the state dictated that a monopoly should be granted, statutes having that effect have been held inoffensive to the constitutional guaranties. Moreover, the state or a municipality may itself enter into business in competition with private proprietors and thus effectively although indirectly control the prices charged by them."

In *Parker, Director of Agriculture et al.* v. *Brown*, 317 U.S. 341, this Court was considering the jurisdiction of the State of California to fix the price of raisins which were to be shipped in interstate commerce. In discussing this question the Court said at Pages 359-360:

"* * * This court has repeatedly held that the grant of power to Congress by the Commerce Clause did not wholly withdraw from the states the authority to regulate the commerce with respect to matters of local concern, on which Congress has not spoken. *Minnesota Rate Cases*, 230 U.S. 352, 399-400; *South Carolina Highway Dept.* v. *Barnwell Bros.*, 303 U.S. 177, 187, *et seq.*; *California* v. *Thompson*, 313 U.S. 109, 113-114 and cases cited: *Duckworth* v. *Arkansas*, 314 U.S. 390. * * *

* * * * *

"In applying the mechanical test to determine when interstate commerce begins and ends (see *Federal Compress Co.* v. *McLean*, 291 U.S. 17, 21 and cases cited; *Minnesota* v. *Blasius*, 290 U.S. 1 and cases cited) this Court has frequently held that for purposes of local taxation or regulation 'manufacture' is not interstate commerce even though the manufacturing process is of slight extent. *Crescent Oil Co.* v. *Mississippi*, 257 U.S. 129; *Oliver Iron Co.* v. *Lord*, 262 U.S. 172;

Utah Power & Light Co. v. *Pfost*, 286 U.S. 165; *Hope Gas Co.* v. *Hall*, 274 U.S. 284; *Heisler* v. *Thomas Colliery Co.*, 260 U.S. 245; *Champlin Refining Co.* v. *Commission*, 286 U.S. 210; *Bayside Fish Co.* v. *Gentry*, 297 U.S. 422. And such regulations of manufacture have been sustained where, aimed at matters of local concern, they had the effect of preventing commerce in the regulated article. *Kidd* v. *Pearson*, 128 U.S. 1; *Champlin Refining Co.* v. *Commission, supra; Sligh* v. *Kirkwood*, 237 U.S. 52, see *Capitol City Dairy Co.* v. *Ohio*, 183 U.S. 238, 245; *Thompson* v. *Consolidated Gas Co.*, 300 U.S. 55, 77; *cf. Bayside Fish Co.* v. *Gentry, supra.* A state is also free to license and tax intrastate buying where the purchaser expects in the usual course of business to resell in interstate commerce. *Chassaniol* v. *Greenwood*, 291 U.S. 584. And no case has gone so far as to hold that a state could not license or otherwise regulate the sale of articles within the state because the buyer, after processing and packing them, will, in the normal course of business, sell and ship them in interstate commerce."

And further in the body of the opinion this Court said at Page 366:

"This history shows clearly enough that the adoption of legislative measures to prevent the demoralization of the industry by stabilizing the marketing of the raisin crop is a matter of state as well as national concern, and in the absence of inconsistent Congressional action, is a problem whose solution is peculiarly within the province of the state. In the exercise of its power the state has adopted a measure appropriate to the end sought. The program was not aimed at nor did it discriminate against interstate commerce, although it undoubtedly affected the commerce by increasing the interstate price of raisins and curtailing interstate shipments to some undetermined extent. The effect on the commerce is not greater, and in some instances was far less, than that which this Court has held not to afford a basis for denying to the states the

right to pursue a legitimate state end. *Cf. Kidd* v. *Pearson, supra; Sligh* v. *Kirkwood, supra; Champlin Refining Co.* v. *Commission, supra; South Carolina Highway Dept.* v. *Barnwell Bros., supra,* and cases cited at p. 189 and Notes 4 and 5; *California* v. *Thompson, supra,* 113-15, and cases cited."

Certainly, if a State acting through its regulatory agency may fix the price of raisins in the interest of protecting a local industry, then a State may lawfully fix the price of natural gas, a commodity in which all classes of people are interested. We think these cases settle the question that there is no violation of the Federal Constitution in the fixing of a wellhead price for natural gas in the Guymon-Hugoton Field. Certainly the State has a right to protect its natural resources and to protect the public interests, and certainly the natural gas business is "affected with the public interests"; and since it is affected with the public interests, we think that the fixing of a uniform price is in the interest of the public good.

The larger portion of the Hugoton Gas Field is in Kansas and the Regulatory Agency of that State has recently fixed a price of 8¢ per thousand cubic feet at the wellhead of gas produced in the Kansas portion of the Hugoton Field. The Supreme Court of Kansas, early in October, 1950, upheld the order and a copy of the opinion in full is attached hereto as Appendix "E." As further evidence of the public's interest in fixing the price of gas at the wellhead, we invite this Court's attention to that opinion.

Generally, gas is discovered in the search for oil. Oil may be marketed in a number of ways, but gas may only be marketed by a sale to a long line gas company. Such a connection will not usually be made unless the producer enters into a contract which dedicates all of the producer's gas to the purchasing company for the life of the reserves. A competitive situation as to price does not exist in respect to gas fields. It exists in respect to oil fields. Monopolistic price control by the long line gas companies is inherent in a gas field without common agreement of the companies and arises out of the conditions peculiar to the transportation of gas to those willing to buy for consumption. Justice Rutledge briefly discussed this situation in *Republic Natural Gas Company* v. *State*, 334 U.S. 62, and said at Page 91:

> "Natural gas in place is volatile and fugitive, once a single outlet is opened. When extracted it cannot be stored in quantity, but must be marketed ultimately at burner tips in the time necessary for conveyance to them from the well mouth. The competitive struggle for the industry's rewards is particularly intense in the initial stage of developing a field. By the industry's very nature large outlays of capital are required for successful continuing production and marketing. All those factors however tend toward monopoly once success has been achieved in a particular field."

Our court, in the opinion appealed from herein, said:

> "It is readily conceivable that in the course of development of a particular gas field, the ownership of producing and marketing facilities might become such, or be so combined, as to permit monopolistic practices. Under the circumstances prices for gas might be established having no relation to the market value of gas prevailing throughout the natural gas industry, and

in other fields of commensurate development costs, and having no relation to the market value of other natural resources and products in competitive usage. On the other hand, a like result might obtain from economic warfare between competing producers and marketers. Under either of such circumstances prices might be so reduced that landowners or royalty holders or particular leaseholders would have their interest in the gas exhausted, dissipated and taken, without having received any reasonable compensation, and each suffer waste of a valuable reversion."

Independent of the public interest premise which has been presented in this portion of the Brief as justification for the fixing of a sale price for gas, it seems to us that the monopolistic character of the business itself is sufficient justification for the action of the State. If it is thus within the authority of the State to so act, is not the question closed by our court's interpretation of the statutes.

"They easily demonstrate that some combination of 'capital, skill or acts' is necessary to any business development, and that the result must inevitably be a cessation of competition. But this does not prove that all combinations are inviolable, or that no restriction upon competition can be forbidden. To contend for these extremes is to overlook the difference in the effect of actions, and to limit too much the function and power of government. By arguing from extremes almost every exercise of government can be shown to be a deprivation of individual liberty. *It is commonplace to say that it is the purpose, and indeed duty, of government, to get all it can of good out of the activities of men, and limit or forbid them when they become or tend to evil.* Of course, what is evil may not be always clear; but to be able to dispute the policy of a law is not to establish its invalidity. It is certainly the conception of a large body of public opinion

that the control of prices through combinations tends to restraint of trade and to monopoly, and is evil. The foundations of the belief we are not called upon to discuss, nor does our purpose require us to distinguish between the kinds of combinations or the degrees of monopoly. It is enough to say that the idea of monopoly is not now confined to a grant of privileges. It is understood to include a 'condition produced by the acts of mere individuals.' "

If the constitution permits or does not prohibit the regulation of a commodity price it seems that for many reasons natural gas stands at the head of the list of such commodities.

PROPOSITION IV

The Order and Statute are not vague, indefinite, and uncertain.

It seems strange to appellees that appellant raises the question that the order issued in this instance is vague, indefinite and uncertain.

After notice and many days of hearings, the Commission issued its Orders Numbered 19514 and 19515 appealed from in this case. Appellant has stipulated (968), that, "parties acknowledge timely and proper service was made of all processes and notices required to be served or given." Appellant did not see fit to enter an appearance in this cause wherein said Orders Numbered 19514 and 19515 were issued. Thereafter in the same case the appellant filed an application to stay the effectiveness of the order as it applied to the appellant, and after notice and hearing

the Commission issued its Order No. 19702, which is found as Appendix "C" to this Brief. In denying appellant's application to vacate its Orders Numbered 19514 and 19515, the Commission specifically found as follows:

> "4. That Order No. 19514 had for its purpose the fixing of a minimum price for natural gas at the wellhead in the Guymon-Hugoton Field, which price was applicable to all producers, purchasers, and takers of gas in the field; that the applicant herein, Phillips Petroleum Company is both a producer and taker of natural gas in the field and transports the gas produced from its leases in Texas County, across the Oklahoma line to a gasoline plant located in Texas, one-half mile south of the Oklahoma line adjacent to Texas County, Oklahoma; that all of the gas produced by Phillips Petroleum Company in Texas County, Oklahoma, is transported to said plant where 6/10ths of one gallon of liquid hydrocarbons are extracted from each thousand cubic feet of gas produced in Texas County, Oklahoma; that the residue gas is then transported by Phillips Petroleum Company from said plant to the nearby location where same is delivered to the Panhandle Eastern Pipe Line Company at a price presently in the amount of 4.67 cents per thousand cubic feet; that the applicant herein then transports daily some 80,000 gallons of liquid hydrocarbons extracted from the natural gas at the plant in Texas, to another plant owned by applicant near Borger, Texas, where the liquid hydrocarbons are then further refined and sold by the applicant herein; that the larger percentage of the liquid hydrocarbons extracted is 26-70 gasoline which has a current market value of between 5 and 5¼ cents per gallon; that the applicant herein, Phillips Petroleum Company, is now realizing from the natural gas produced in the Guymon-Hugoton Field, the equivalent of approximately 7¢ per thousand cubic feet at the wellhead within the terms and meaning of Orders Nos. 19514 and 19515; that the applicant, Phillips Petroleum Company, did

not see fit to introduce any evidence as to profits or losses from the production of natural gas in the Guymon-Hugoton Field and since the application filed herein alleged hardship if forced to comply with Orders Nos. 19514 and 19515, it was incumbent upon the applicant to introduce proof showing wherein such hardship would occur.

"5. That applicant complains that Paragraph 1 of Order No. 19514 and Paragraph 4 of Order No. 19515 prohibit said applicant from producing any natural gas in the Guymon-Hugoton Field, and taking same from the formation because of the requirement that said gas must be sold at a price of 7¢ per thousand cubic feet at the wellhead; that said orders were meant to prohibit the production of natural gas from the producing formations in said field unless same was sold at a price of 7¢ per thousand cubic feet on the measurement basis provided for in said orders, if same were sold, but if not sold, that said gas should be so utilized and/or sold, that the producer would realize therefrom the equivalent of 7¢ per thousand cubic feet at the wellhead and on the pressure basis provided for in Orders Nos. 19514 and 19515; that the applicant, Phillips Petroleum Company, is realizing from the utilization and sale of natural gas produced by it in the Guymon Field, the equivalent of 7¢ per thousand cubic feet at the wellhead, on the pressure basis of measurement provided for in said orders for all natural gas produced by it in the Guymon-Hugoton Field; therefore in that respect applicant is already complying with Orders Nos. 19514 and 19515.

"6. That inefficient and wasteful utilization of natural gas produced in said field have resulted and will result, unless producers in said field receive for said natural gas or realize the equivalent of 7¢ per thousand cubic feet of natural gas at the wellhead, measured at a pressure of 14,65 pounds absolute pressure per square inch; that the price presently being paid for natural gas varies throughout the field with no uniform price and that this Commission, unless it fixes a uniform

price for the field. is permitting discrimination in price which adversely affects many producers and royalty owners; that the price being paid has no relation to the intrinsic value of the natural gas and is not a comparable price with other fuels; that it has no relation to the replacement value of the natural gas and one of Oklahoma's natural resources is being dissipated and wasted all to the detriment of the producers, royalty owners, School Land Commission, and the State of Oklahoma, and unless a price is fixed that has some relation to its actual value, the inefficient and wasteful utilization of gas from the Hugoton Field will result in great losses of one of Oklahoma's most valuable resources.

"7. That applicant herein, Phillips Petroleum Company, is not injured by the application of a 7¢ price of all gas produced by it in the Hugoton Field since it is presently realizing approximately that amount at this time.

"8. That this application should be denied in the interest of preventing: (a) economic waste of a great natural resource to-wit: natural gas, (b) actual physical waste of natural gas in the Hugoton Field, (c) loss to the producers and royalty owners in said field, (d) loss to the State of Oklahoma in revenues in the form of gross production tax and loss to the schools of the State of Oklahoma in the form of lessening royalties accruing to the School Land Commission, (e) the inequitable taking of natural gas from the common sources of supply owned by all; (f) discrimination as to prices paid throughout the field, which discrimination adversely affects many royalty owners and producers; (g) the inefficient and wasteful utilization of natural gas."

This order is plain and unambiguous and appellees see no reason why appellant is unable to construe Order No. 19514 in view of the interpretation placed thereon by Order No. 19702, *supra*. It will be noted that the Com-

mission specifically found that appellant was already complying with Order No. 19514 in that it was realizing from the sale of gas produced by it "approximately 7¢ per thousand cubic feet at the wellhead within the terms and meaning of Orders Numbered 19514 and 19515." This interpretation of Order No. 19514 was made by the Corporation Commission of Oklahoma the same regulatory agency, that issued said Order No. 19514 and within a very few days after the issuance thereof. The appellant herein was at the time of the issuance of Order No. 19702 gathering its gas in the Hugoton Field from its various wells, transporting same to a processing plant just outside of the State of Oklahoma, and after extracting certain hydrocarbons therefrom, was selling the residue to the Panhandle Eastern Pipe Line Company under a contract (861). From an examination of the contract, it will be found that Section 12 (882) thereof provides that the terms and provisions of said contract were made subject to the future exercise of the police power of the regulatory agency having jurisdiction of the parties. Moreover all contracts are subject to proper regulations issued pursuant to the police power of the State. If there is any doubt in the interpretation of Order No. 19514, then the same regulatory agency that issued the order is available to this appellant for the purpose of clarifying said order on a proper application.

The question as to whether or not the statute interpreted by the Supreme Court of our State is vague, in-

definite and uncertain, is settled by the opinion of our court in this case. Appellant urged this proposition there, and our court found that the orders were not vague, indefinite and uncertain.

In *Patterson* v. *Stanolind Oil & Gas Company*, 182 Okla. 155, 77 Pac.(2d) 83 (for disposition on appeal, see 305 U.S. 376), it was urged that the well spacing statute was vague, indefinite and uncertain in that it prescribed no standard by which the Commission should be governed and in passing on that question the Supreme Court of Oklahoma said at Pages 161-162, 77 Pac.(2d) 83, 91:

> "The best manner of well-spacing or a criterion by which this might be arrived at could not be anticipated or prescribed in advance of the opening of an oil field because of the difference between the conditions in one field and those in another and the variability of the effect which such conditions have upon the objects to be obtained. The impossibility of fixing a definite standard for the administration and enforcement of oil and gas conservation measures has been given great weight in the judicial determinations of their validity in other jurisdictions. See *Brown* v. *Humble Oil & Refining Co.*, *supra*, and *People* v. *Associated Oil Co.*, 211 Cal. 93, 294 P. 717. In the latter of these cases, the court was considering the validity of a statute for the prevention of the waste of natural gas. With reference to the contention that the standard set forth in said act was objectionable on account of its vagueness and uncertainty, the court said: 'Therefore, because of the many and varying conditions peculiar to each reservoir and to each well, which will bear upon a determination of what is a reasonable proportion of gas to the amount of oil produced, it may be said that it would be impossible for

the Legislature to frame a measure based on ratios or percentages or definite proportions which would operate without discrimination, and that what is a reasonable proportion of gas to the amount of oil produced from each well or reservoir is a matter which may be ascertained to a fair degree of certainty in each individual case.'

"In our opinion the validity of the statute in question should be tested by the rule in Volume 25 of Ruling Case Law, at Page 810, as follows:

> 'An act will not be declared inoperative and ineffectual on the ground that it furnishes no adequate means to secure the purpose for which it was passed, if men of common sense and reason can devise and provide the means, and all the instrumentalities necessary for its execution are within the reach of those intrusted therewith.' "

In *Mutual Film Corporation* v. *Industrial Commission of Ohio*, 236 U.S. 230, this Court had under consideration a statute providing for censorship of moving-picture films within the State. The particular section involved was quoted at Page 240:

> "SECTION 4. 'Only such films as are, in the judgment and discretion of the board of censors, of a moral, educational, or amusing and harmless character shall be passed and approved by such board.' The films are required to be stamped or designated in a proper manner."

In passing on the question there involved this Court said at Pages 245-246:

> "The objection to the statute is that it furnishes no standard of what is educational, moral, amusing, or harmless, and hence leaves decision to arbitrary judgment, whim, and caprice; or, aside from those extremes, leaving it to the different views which might be enter-

> tained of the effect of the pictures, permitting the 'personal equation' to enter, resulting 'in unjust discrimination against some propagandist film,' while others might be approved without question. But the statute by its provisions guards against such variant judgments, and its terms, like other general terms, *get precision from the sense and experience of men, and become certain and useful guides in reasoning and conduct. The exact specification of the instances of their application would be as impossible as the attempt would be futile.* Upon such sense and experience, therefore, the law properly relies. This has many analogies and direct examples in cases, and we may cite *Gundling* v. *Chicago*, 177 U.S. 183; *Red "C" Oil Manufacturing Co.* v. *North Carolina*, 222 U.S. 380; *Bridge Co.* v. *United States*, 216 U.S. 177; *Buttfield* v. *Stranahan*, 192 U.S. 470. See also *Waters-Pierce Oil Co.* v. *Texas*, 212 U.S. 86. If this were not so, the many administrative agencies created by the state and national governments would be denuded of their utility, and government in some of its most important exercises become impossible."

In *Mahler* v. *Eby*, 264 U.S. 32, this Court considered a statute governing the deporting of undesirable aliens, and said at Page 40:

> "With the background of a declared policy of Congress to exclude aliens classified in great detail by their undesirable qualities in the Immigration Act of 1917, and in previous legislation of a similar character, we think the expression 'undesirable residents of the United States' is *sufficiently definite to make the delegation quite within the power of Congress.* As far back as 1802 the naturalization statute of that year (c. 28, 2 Stat. 153) prescribed that no alien should be naturalized who did not appear to the court to have behaved during his residence in this country 'as a man of good moral character, attached to the principles of the Constitution of the United States, and well dis-

posed to the good order and happiness of the same.' Our history has created a common understanding of the words 'undesirable residents' which gives them the quality of a recognized standard."

In *Federal Radio Commission* v. *Nelson Bros. Bond & Mortgage Co.*, 289 U.S. 266, this Court interpreted a statute governing radio permits. It was there contended that the language of the statute provided no definite standards, and this Court said at Page 285:

"In granting licenses the commission is required to act 'as public convenience, interest or necessity requires.' This criterion is not to be interpreted as setting up a standard so indefinite as to confer an unlimited power. Compare *N. Y. Central Securities Co.* v. *United States*, 287 U.S. 12, 24. The requirement is to be interpreted by its context, by the nature of radio transmission and reception, by the scope, character, and quality of services, and, where an equitable adjustment between states is in view, by the relative advantages in service which will be enjoyed by the public through the distribution of facilities. In making such an adjustment the equities of existing stations undoubtedly demand consideration. They are not to be the victims of official favoritism. But the weight of the evidence as to the equities and all other pertinent facts is for the determination of the commission in exercising its authority to make a 'fair and equitable allocation.' "

In *Schechter Corp.* v. *United States*, 295 U.S. 495, this Court said at Pages 538-539:

"Nor is the breadth of the President's discretion left to the necessary implications of this limited requirement as to his findings. As already noted, the President in approving a code may impose his own conditions, adding to or taking from what is proposed, as 'in his discretion' he thinks necessary 'to effectuate the policy' declared by the Act."

The rule is stated in 42 Am. Jur., p. 346, Sec. 45, as follows:

> "The modern tendency is to be more liberal in permitting grants of discretion to administrative authorities in order to facilitate the administration of laws as the complexity of economic and governmental conditions increases. * * * The policy of the law-making body and the standards to guide the administrative agency may be laid down in very broad and general terms *which get precision from the technical knowledge or sense and experience of men and thereby become reasonably certain.* A requirement that an act shall be 'in the public interest' has been held to be a sufficient criterion and standard where the subject matter of the statute renders this an intelligible and not limitless criterion."

In *Republic Natural Gas Co.* v. *State et al.*, 334 U.S. 62, 98, it is said:

> "For we have constantly recognized the propriety of allowing wide discretion to the administrative agencies who are best qualified to select the most reasonable solution to the thorny problems that accompany regulation in this highly technical field. *Railroad Commission of Texas* v. *Rowan & Nichols Oil Co.*, 310 U.S. 573, 60 S. Ct. 1021, 84 L. ed. 1368."

It must be noted that a different rule applies where penalty provisions of a statute are being construed.

Appellant relies on the *Champlin case.* That same case was relied on in *Patterson* v. *Stanolind Oil & Gas Co., supra.* In respect to that contention, the Supreme Court of Oklahoma said:

> "This case does not invoke a consideration by us of the doctrine of uncertainty as it would be applied to penal statutes, as did the *Champlin case, supra,* in

view of the fact that plaintiff is not being proceeded against under the penal provisions of the 1933 Act."

On Page 19 of appellant's Brief, it cites from the case *Small Company* v. *American Sugar Refining Company*, 267 U.S. 233. Therein this Court refused to adopt a contention of the defendant that a contract was invalid because it was in violation of Section 4 of the Lever Act which provides that it shall be unlawful to make any unreasonable charge in dealing with any necessaries. The Court had previously held such section of the Act to be invalid in criminal prosecutions and in the *Small case* it held the Act did not invalidate contracts. The difference in the situation there confronting the Court and that which is before the Court herein is that the Lever Act did not make provision for any administrative agency to make a determination of what constitutes an unreasonable charge and there was therefore no consistent guide or standard for the determination of the rights of all parties. Herein the statutes involved, in general language authorized the Commission to make determinations, to prevent unjust discrimination and prevent waste. Such a determination was made by the Commission in the order which set the price of natural gas in the Hugoton Field at not less than 7¢ per thousand cubic feet.

In *Bowles* v. *Willingham*, 321 U.S. 503, this Court considered the Price Control Act. One of the questions raised was that the Act was unconstitutional because it was an unlawful delegation of authority to an administrative of-

ficer and did not set up any standards by which the administrative officer was to enforce the Act. In effect this Court held that there may be a zone for the exercise of the discretion of an administrative officer "where Congress has prescribed the general standard and has left to him the determination of the precise situation to which the statute will be applied." Further that the exercise of such power is not unconstitutional because the Act provides merely that the orders of the administrator shall be "generally fair" and equitable without providing that they shall be fair and equitable as to each particular landlord.

In *Bandini Petroleum Company* v. *Superior Court*, 284 U.S. 8, this Court was construing the statute enacted by the State of California which prohibited "unreasonable waste" of natural gas. No standards were provided by which unreasonable waste could be determined and the Supreme Court of the State of California construed said statute as being sufficiently broad to prohibit the production of natural gas without its lifting power having been utilized to produce the greatest quantity of oil in proportion. In determining whether or not this statute was vague, indefinite and uncertain, the Court stated the appellants' position as follows at Page 13:

> "The appellants contended, in substance, that the statute violated the due process clause of the 14th Amendment in that it afforded no certain or definite standard as to what constituted 'waste' or 'unreasonable waste' and unlawfully delegated power to the Superior Court to legislate upon that subject; in that,

upon the facts and as applied against the appellants, the statute prohibited them 'from utilizing such amount of natural gas produced from their respective wells' as was 'reasonably necessary to produce oil therefrom in quantities not exceeding a reasonable proportion to the amount of oil produced from the same well;' and in that the statute required appellants to curtail their production of oil and gas 'for the purpose of conserving such natural gas for the benefit of the general public' without eminent domain proceedings and without just compensation, and was so arbitrary and oppressive that it was in excess of the power of the State."

This Court then quoted from the Supreme Court of California as follows at Page 16:

> "It is estimated that only from ten to twenty-five per cent of the total amount of oil deposited in a reservoir is ultimately recovered, depending on the natural characteristics of the reservoir and the methods employed in utilizing the lifting power of the gas. The importance of gas in the oil-producing industry has, therefore, become a question of great concern to the industry itself and to government, to the end that its function may be fully utilized without waste."

In concluding, in as much as the Supreme Court believed the simple standard of prohibition of waste to be an adequate working standard for the California courts, this Court said at Page 18:

> "The statute is to be read with the construction placed upon it by the state court. *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U.S. 61, 73, 55 L. ed. 369, 375, 31 S. Ct. 337, Ann. Cas. 1912C, 160. And so read, we find no ground for concluding that the statute should be regarded as invalid upon its face, merely by reason of uncertainty, so as to deprive the Superior Court of jurisdiction to consider the relevant questions of fact and to determine with respect to a particular

field whether or not there has been the unreasonable waste of gas which the statute condemns. *Nash* v. *United States*, 229 U.S. 373, 377, 57 L. ed. 1232, 1235, 33 S. Ct. 780; *Miller* v. *Strahl*, 239 U.S. 426, 434, 60 L. ed. 364, 368, 36 S. Ct. 147; *Omaechevarria* v. *Idaho*, 246 U.S. 343, 348, 62 L. ed. 763, 767, 38 S. Ct. 323; *Hygrade Provision Co.* v. *Sherman*, 266 U.S. 497, 502, 69 L. ed. 402, 407, 45 S. Ct. 141."

Surely, if a statute such as this may be upheld as being definite and certain, then the Oklahoma statute should be upheld as being broad enough to confer jurisdiction upon the Corporation Commission to fix the price of natural gas in the Guymon-Hugoton Field when it says (Sec. 233, Title 52, O.S.A.) as follows:

> *"Any person, firm or corporation, taking gas from a gas field, except for the purposes of developing a gas or oil field, and operating oil wells, and for the purpose of his own domestic use, shall take ratably from each owner of the gas in proportion to his interest in said gas, upon such terms as may be agreed upon between said owners and the party taking such, or in case they cannot agree at such a price and upon such terms as may be fixed by the Corporation Commission after notice and hearing; provided, that each owner shall be required to deliver his gas to a common point of delivery on or adjacent to the surface overlying such gas"* (Laws 1913, Ch. 198, p. 440, Sec. 3),

and when the statute further said (Sec. 239, Title 52, O.S.A. 1941):

> *"The said commission is authorized and directed to prescribe rules and regulations for the determination of the natural flow of any such well or wells, and to regulate the taking of natural gas from any or all such common sources of supply within the state, so as to prevent waste, protect the interest of the public, and*

of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another" (Laws 1915, Ch. 197, Sec. 4),

and when it further said (Sec. 240, Title 52, O.S.A. 1941):

"The Corporation Commission shall have authority to make regulations for the delivery, metering and equitable purchasing and taking of all such gas and shall have authority to relieve any such common purchaser, after due notice and hearing, from the duty of purchasing gas of an inferior quality or grade" (Laws 1915, Ch. 197, Sec. 5).

As this Court said in *Bandini Petroleum Company* v. *Superior Court, supra,* "in determining the constitutionality of the state law it is to be read with the construction placed upon it by the state court." In this case the Supreme Court of the State of Oklahoma has interpreted the statutes complained of by appellant as being sufficiently broad to confer jurisdiction upon the Corporation Commission to fix the price of natural gas in Oklahoma. The order issued pursuant to such statutes was likewise approved. Appellant only has difficulty in interpreting the order.

PROPOSITION V

The Order appealed from is not arbitrary, unjust or unreasonable.

The Commission, after notice to appellant devoted some 17 days to hearing the application wherein Order No. 19514 was issued. A brief review of the evidence will

disclose that the order was not arbitrary, unjust or unreasonable.

KENNETH ELLISON, an independent consulting geologist from Oklahoma City, testified (72-74), that the pressure on the Peerless well located in Section 8, had declined from May 2, 1945 to May 3, 1946, from 427 pounds per square inch to 419.5 pounds per square inch, thus indicating that there had been drainage of natural gas from underneath said section without such gas having been produced by the well located on the section. He further testified (74) that the wells directly to the west of Section 8 were draining the natural gas from underneath said section. He then testified (77) that the well owned by Peerless Oil & Gas Company in Section 8 had already suffered drainage in the amount of $24,835.00, assuming the wellhead price to be 4¢ per 1,000 cubic feet. He then testified (78) that the drainage of the wells owned by Peerless was occasioned by the fact that the Cities Service wells are the nearest wells to the Peerless well and are the ones that are causing the drainage. Incidentally, this testimony is not refuted anywhere in this record by the Cities Service Gas Company.

WILLIAM D. WEINDLEIN, a consulting engineer of St. Paul, Minnesota, testified (96) as to his qualifications as an engineer and as to his experience in the gas business. He testified (118) that the fair price for natural gas at this time in the Guymon-Hugoton Field was 6¢ per 1,000

cubic feet on a 2-pound base or about 6½¢ on a 14.65-pound base. He then testified that the price now being paid in the Guymon-Hugoton Field (from 3.6¢ to 5¢ per 1,000 cubic feet of gas on a 2-pound base), constituted economic waste. He was of the further opinion (119) that that price had a definite relationship to conservation and that the fixing of a higher price than that being presently paid would be conducive to and assist in the conservation of natural gas. He then stated (120) that that statement had some limitation and that the top price for natural gas in the field should be 9¢ per 1,000 standard cubic feet of gas of 1,000 to 1,005 BTU's per cubic foot. In other words, any price lower than 9¢ would not be conducive to conservation of natural gas and any price above 9¢ in his opinion would not result in any increased conservation practices.

M. L. MAYFIELD of Houston, Texas, testified (150) that he was a registered petroleum and natural gas consultant; that he was a graduate of the University of Oklahoma; had been employed by the Slick Oil Company, Empire Oil Company, Cities Service Oil Company, and as chief petroleum engineer for the Cotton Valley Operators Committee which committee operated the Cotton Valley Pool, which is presently being recycled and operated under a plan of unitization. He was technical advisor and engineer to the Natural Gas and Natural Gasoline Committee of the Petroleum Administrator for War for District No. 3

during the war. He also testified for the State of Texas as an expert witness in Docket G-580 conducted by the Federal Power Commission, when that Commission was making an exhaustive survey of the natural gas reserves, prices and practices during the years 1945 and 1946. He made tests of the character of the natural gas in the Guymon-Hugoton Field as to the component parts of such gas and was familiar with the productive history in that field. He further testified (155) that he had made a study of the intrinsic value of dry natural gas as compared to the value of other sources of fuel on the basis of BTU content. He stated (157) that the intrinsic value of 10¢ per 1,000 cubic feet of natural gas at the wellhead equals $1.54 per ton of coal and that the price of natural gas was so low as to be, in some cases, almost a token price; that the heating value of 6,000 cubic feet of gas was approximately equal to a barrel of oil and that oil was worth approximately $2.00 per barrel. Using Kansas City as a point of comparative prices, with coal at $4.50 per ton and fuel oil at $1.18 per barrel, that natural gas in the Guymon-Hugoton Field is worth in excess of 19¢ to 20¢ in Kansas City and that after allowing nominal transportation costs, the intrinsic value of natural gas in the Guymon-Hugoton Field is well in excess of 10¢ per 1,000 cubic feet. He then testified (161) that in his opinion natural gas in the Guymon-Hugoton Field at the wellhead is worth 10¢ per 1,000 cubic feet and comparing it to fuel oil and heating

value in the Guymon-Hugoton Field, the natural gas is worth 20¢ at the wellhead. In his opinion (163) the present depressed price of natural gas in the Guymon-Hugoton Field was caused by the major pipe line companies owning large blocks of acreage in the pool and those not having pipe line outlets being forced to accept whatever price was offered them by the major companies, or else sit idly by and watch their gas being drained from underneath their land; that the law of supply and demand was not operative because of these conditions; and that it was fundamental that as things become more valuable there is more and greater effort to conserve them and that certainly there would be greater conservation of natural gas if the price was increased to 10¢ per 1,000 cubic feet. Heathen stated the present price being paid in the Guymon-Hugoton Field constitutes economic waste for the reason that the gas was being sold at a price lower than its intrinsic value and much lower than its comparative price with other fuels; that he was familiar with the purchase contracts of the field calling for gas measurement of 2 pounds above 14.4 pounds per square inch, and that the atmospheric pressure in the Guymon-Hugoton Field was 14.4 pounds per square inch; that by using a different unit of measurement for measuring the gas, the purchasing companies were acquiring approximately 11% more gas than they were paying for since the sale price of natural gas at the other end of the line was not based on 14.4 plus 2 pounds.

ROSS PIERCE testified (203) that he was employed by the School Land Commission as head of the Oil and Gas Division; that the Commissioners of the Land Office owned 49,600 acres of land in Texas County, 30,160 acres of which were under lease contract; and that the Commissioners of the Land Office owned 6,099.92 acres that were productive of gas at this time; that the Commissioners of the Land Office were being paid as royalty on the basis of 4¢ for gas at the wellhead, and in some instances on the basis of 5¢ at the wellhead, and that the Phillips Petroleum Company was offering to pay them 3.34 cents for their portion of the natural gas at the wellhead upon that acreage covered by leases to the Phillips Petroleum Company.

W. D. MCBEE testified (185) that he was employed by the Commissioners of the Land Office and had made an investigation of the comparative prices of natural gas with coal.

MR. MAYFIELD was then recalled to the stand for the purpose of explaining some of the exhibits prepared by Mr. McBee, since Mr. Mayfield was an expert in these matters. He testified (188) that the average BTU content of natural gas in the Guymon-Hugoton Field was 1,000 BTU's per cubic foot of gas produced where the gas was measured at 14.735 pounds per square inch. He testified (189) that coal worth $5.31 per ton was equal to 23 cents

per 1,000 cubic feet of natural gas in the Guymon-Hugoton Field and that coal at $7.35 per ton f.o.b. McAlester was equal to 27¢ per 1,000 cubic feet for natural gas; that coal worth $5.35 per ton at Henryetta was equal to 20.3¢ per 1,000 cubic feet of gas.

ERNEST C. ARNOLD, supervisor of oil and gas operations in Osage County for the Federal Government, testified (200) that the Cities Service Gas Company was paying 18¢ per 1,000 cubic feet for natural gas from certain leases in Osage County and had been paying that amount for many years.

WALKER T. POUND testified (278 and following pages) that he was oil and gas conservation officer of the Oklahoma Corporation Commission, and had been employed in that capacity since December 1, 1942; and prior to that time had served about seven years as deputy conservation officer; that prior to that time he had been engaged in the oil and gas business in one way or another and that he had made "a detailed study of the oil and gas industry in connection with production and transportation of natural gas"; that he made this study (281) with particular attention to its conservation and the things that lead to and result in good conservation and poor conservation practices, and that said study included the Guymon-Hugoton Natural Gas Field. He testified (282) in answer to a direct question as to the relationship of price to the prevention of waste, as follows:

"My opinion is that the price at which gas is sold at the wellhead has a very direct relationship to the prevention of the waste of gas, and conversely, to its conservation. I think a low field price automatically results in waste."

He then testified (283) as follows:

Q. "What in your opinion, should the price be, the minimum price, in the Guymon-Hugoton Field, for natural gas, at the wellhead, in order that the waste of natural gas as a natural resource be prevented and the conservation of the same promoted?

A. My opinion is that gas, in the Guymon-Hugoton Field, in order to prevent waste, should not sell for less than 10 cents per 1,000 cubic feet."

He testified (284) that there was waste in the Guymon-Hugoton Field by everybody who is producing it in that it is sold for less than it is worth and thereby the royalty owner, the State of Oklahoma and its citizens suffer a loss. He then testified that there is some venting of gas in the course of drilling wells and that there would be no venting if the price was such as to justify the conservation of natural gas.

Cities Service which was the principal objector at the hearing, did not see fit to refute any of the testimony as to comparative values or as to the value of natural gas at the wellhead or that gas was being vented in the field because of the low price being paid for same. They contented themselves with showing that the gas was being sold from 3.334¢ per 1,000 cubic feet to 5¢ per 1,000 cubic feet, and attempted to establish a "going price" for

gas in the field by showing the weighted average price. Nowhere in the record is it contended by anyone that discrimination is not being practiced by the hodge-podge prices that prevail in this field. The record is replete with testimony that shows that the prices paid throughout the field are those prices at which the purchasers desire to buy and that the producers, royalty owners, Commissioners of the Land Office and other interested parties have no choice in the matter other than to accept the prices offered by the purchasing pipe lines or suffer the gas to be drained from underneath their leases without being allowed to produce same. Therefore there is ample testimony in the record to justify the issuance of both Orders Numbered 19514 and 19515, see Appendix "A" and "B", fixing a minimum price below which gas may not be produced in the Guymon-Hugoton Field. We see no reason why the State of Oklahoma in the protection of its citizens, should not be allowed to fix a price of natural gas in the Guymon-Hugoton Field. The appellant Phillips Petroleum Company should be the last person to claim the unreasonableness of the order since the Corporation Commission has already found (see Appendix "C") that the Phillips Petroleum Company is now complying with the order in that it is realizing from the sale of its produced gas, approximately 7¢ per 1,000 cubic feet. The testimony shows, in this case, that the Phillips Petroleum Company, while realizing approximately 7¢ per 1,000 cubic feet, is attempting to settle with its royalty owners

on the basis of 3.34¢ per 1,000 cubic feet for the 1/8 interest owned by the royalty owners. It has tendered to the School Land Commission which owns thousands of acres of royalty, division orders which provide that the School Land Commission shall receive from Phillips Petroleum Company 3.34¢ per 1,000 cubic feet for its 1/8 portion of the gas produced from the lands owned by the School Land Commission. It occurs to appellees that in view of Order No. 19702 there is nothing left to do in order to be in compliance with Order No. 19514 except to pay its royalty owners their 1/8 share of the value of all gas produced by Phillips.

The fact that the Phillips is a producer and gatherer of natural gas and does not sell its gas at the wellhead is no barrier to the Phillips complying with the order. As stated before, if this order needs clarification, the Phillips may file an application with the Corporation Commission for an order clarifying the order as it relates to that company.

Where is there any unreasonableness in an order that permits the producer to receive 7¢ per 1,000 cubic feet for gas produced on lands in Oklahoma, when gas in other fields in Oklahoma is being produced and sold as high as 18¢ per 1,000 cubic feet, and where gas in the Guymon-Hugoton Field is being produced, gathered, and transported to foreign markets and there sold for as high as 50¢ per 1,000 cubic feet. In fact, it seems to the appellees that it would be unreasonable for the State of Oklahoma to sit

idly by and see one of its greatest natural resources dissipated without the natural resource producing its share of revenues for the operation of the schools of Oklahoma and for the operation of the general state governments.

PROPOSITION VI

There is no discrimination as between separate common sources of supply or as between producers in the same common source of supply.

The appellant has raised the question that Order No. 19514 is discriminatory because it fixes a price for only one of several common sources of supply of natural gas in Oklahoma. Section 239 of Title 52, O.S.A. 1941, provides, among other things, as follows:

> "The said commission is authorized and directed to prescribe rules and regulations for the determination of the natural flow of any such well or wells, and to regulate the taking of natural gas from *any or all* such common sources of supply within the state so as to prevent waste, protect the interest of the public and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one common source of supply as against another."

This language directs the Commission to regulate the taking of natural gas from "any or all" such common sources of supply within the State. In other words, there is no obligation on the Commission to make a state-wide minimum price order and the statute clearly contemplates that the Commission shall separately regulate the taking of

natural gas from the various common sources of supply. It takes no stretch of imagination to at once determine that a state-wide price for all natural gas produced in the State would in itself promote the rankest kind of discrimination as between the various pools in the State. Natural gas in Oklahoma is produced from wells varying in depth from 500 to 12,000 feet, and the cost of producing gas varies in each separate common source of supply in the State. An order fixing a state-wide price would have to be high enough to permit each well to produce economically and this in itself, would require that instead of a 7¢ price, the economic conditions involved would require a price three times higher than that in certain deep pools in Oklahoma. The consumers of natural gas in Oklahoma and in other states which use Oklahoma gas, would certainly be discriminated against in any state-wide field price.

The Corporation Commission of Oklahoma deals with these problems from day to day and is familiar with the regulatory problems of the major common sources of supply of gas in Oklahoma. It seems, therefore, the better part of wisdom, to follow the language used in the recent case of *Republic Natural Gas Company* v. *State et al.*, 334 U.S. 62, 98, wherein it is said:

> "For we have constantly recognized the propriety of allowing wide discretion to the administrative agencies who are best qualified to select the most reasonable solution to the thorny problems that accompany regulation in this highly technical field. *Railroad Commission of Texas* v. *Rowan & Nichols Oil Co.*, 310 U.S. 573, 60 S. Ct. 1021, 84 L. ed. 1368."

Classifications, based on differences in conditions do not violate the equal protection clause of the Constitution, and it would be violative of such clause, to fail to recognize such conditions.

The appellant has raised the question that it is being discriminated against by the application of Order No. 19514 since it does not sell its gas at the wellhead but gathers and transports same across the State line to its plant in Texas and thereafter extracts the hydrocarbons before sale is made to the Interstate Pipeline Company. It seems to urge that since the sale of gas is not made at the wellhead, then some discrimination is being practiced by the application of the order. The Corporation Commission was conversant with all these facts at the time it issued Order No. 19514 and at the time it interpreted said order by the issuance of said Order No. 19702 denying Phillips' application to modify Order No. 19514. The Commission knew that very little, if any, gas from the approximately 700 wells in the Guymon-Hugoton Field was sold at the wellhead. Contracts in evidence in this case show that the various producers in the field owning approximately all of the wells in the field all operate in the same manner that the appellant operates its properties, that is, they produce the gas from the various wells, transport same through their gathering systems to some central plant usually in the field, and there sell the gas to the Interstate Pipe Line Company, which transports same to points in Oklahoma and outside of Oklahoma. In some instances

the produeers operate their own extraction plants and then sell the gas after extracting the hydrocarbons to nearby interstate pipeline companies. In other instances, the gas is produced and then gathered by the producer and transported to the extraction plant which is owned by the interstate pipeline company and then make the sale prior to the gas being processed through the plant. Phillips, the appellant in this case, operates the same as all other producers except that it transports its gas through its gathering lines to its plant located just outside the State of Oklahoma where the gas is proceessed and then sold to the Panhandle Eastern Pipe Line Company. The effect of Order No. 19514 as applied to Phillips is the same as it is when applied to all other producers, in other words, all royalty owners and producers in the field must realize at least 7¢ per 1,000 cubic feet for their ⅛ share of the gas produced on their farms and the State of Oklahoma must realize 5% as a gross production tax on all gas produced in the Guymon-Hugoton Field, the 5% being applicable on the basis of 7¢ per 1,000 cubic feet. The Phillips, like all other producers in the field, have the option of either paying its royalty owners and paying the State of Oklahoma on the basis of 7¢ per 1,000 cubic feet or of shutting in its producing wells. If the Phillips is not realizing 7¢ per 1,000 cubic feet for all gas it produces, then its remedy is the same remedy that all other producers have and that is to renegotiate its contract with its interstate pipe line purchasers.

This order was meant to be applicable to all producers alike and as stated in Order No. 19702, it had for its purpose the fixing of a minimum price for natural gas in the Guymon-Hugoton Field, which price was applicable to all producers, purchasers, and takers of gas in this field.

We fail to see where there is any discrimination as between the producers in the Guymon-Hugoton Field by the application of Order No. 19514, which was meant to and is applied to producers, purchasers and takers of natural gas in the field.

PROPOSITION VII

There is no substantial Federal question involved and this appeal therefore should be dismissed.

In this Brief we have demonstrated that the Federal Government has not attempted to exercise any jurisdiction over the fixing of a price for natural gas in the field and that the fixing of a price for natural gas is not repugnant to the Federal Constitution. In a long line of decisions this Court has held that the due process clause does not take up the laws of the several states and make all questions pertaining to them constitutional questions, nor does it enable this Court to review the decisions of the state courts upon questions of state law.

Sayward v. *Denny* (Wash., 1895),
158 U.S. 186, 15 S. Ct. 777,
39 L. ed. 941, 943;

Central Land Co. v. *Laidley* (W. Va., 1895) 159 U.S. 103, 112, 16 S. Ct. 80, 40 L. ed. 91, 94;

Del Castillo v. *McConnico* (La., 1898), 168 U.S. 674, 683, 18 S. Ct. 229, 42 L. ed. 622, 625, 684;

Enterprise Irrigation Dist. v. *Farmers' Mut. Canal Co.* (Nebr., 1917), 37 S. Ct. 318, 243 U.S. 157, 61 L. ed. 644.

This Court has also held that when the parties have been fully heard in the regular course of judicial proceedings, the erroneous decision of a state court does not deprive the unsuccessful party of his property without due process of law.

Walker v. *Sauvinet* (La., 1876), 92 U.S. 90, 23 L. ed. 678.

See, also:

Central Land Co. v. *Laidley* (W. Va., 1895), 159 U.S. 103, 16 S. Ct. 80, 40 L. ed. 91;

Bergemann v. *Backer* (N.J., 1895), 157 U.S. 655, 15 S. Ct. 727, 39 L. ed. 845;

Morley v. *Lake Shore, etc. Ry. Co.* (N.Y., 1892), 146 U.S. 162, 13 S. Ct. 54, 36 L. ed. 925;

Head v. *Amoskeag Mfg. Co.* (N.H., 1885), 113 U.S. 9, 5 S. Ct. 441, 28 L. ed. 889.

It is therefore obvious then that a correct decision of a state court does not deprive the unsuccessful party of his property without due process of law. We are of the opinion that no substantial question is involved in this appeal and

that therefore the case should be dismissed and that the line of reasoning adopted in *Hunter Co.* v. *McHugh*, 320 U.S. 227, should be followed.

CONCLUSION

Since the questions involved herein are with others involved in the appeal of Cities in Case No. 153 of the October, 1950 term, we adopt the Brief of appellees in that case, in further answer to the Brief of Phillips filed in this case.

We think that if we are to have ratable taking of natural gas in the Hugoton Field without discrimination, this Court should uphold the opinion of the Supreme Court of Oklahoma, otherwise the "Law of the Jungle" will continue to be applied in this field, and prices, taxes and other matters of major importance will be determined by the major pipe lines who have producing properties and outlets to foreign markets. The opinion of the Supreme Court of Oklahoma is but another milestone along the road to conservation, wherein the people of the State, acting through their regulatory agency, are trying to protect a major natural resource, the people owning that resource.

For the reasons stated herein, it is respectfully submitted that the judgment of the court below should be affirmed and the appeal of Phillips should be dismissed.

Respectfully submitted,

FLOYD GREEN,
Attorney for the State of Oklahoma and the Corporation Commission of the State of Oklahoma;

T. MURRAY ROBINSON,
Attorney for the State of Oklahoma;

MAC Q. WILLIAMSON,
Attorney General for the State of Oklahoma;

FRED HANSEN,
Assistant Attorney General for the State of Oklahoma;

Attorneys for the State of Oklahoma and the Commissioners of the Land Office of the State of Oklahoma;

THOMAS J. LEE,
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Attorneys for the Commissioners of the Land Office of the State of Oklahoma;

D. A. RICHARDSON,
Company, a corporation,
Attorneys for Appellees.

OCTOBER, 1950.

APPENDIX "A"

"BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

"Peerless Oil and Gas Company, a corporation, *Applicant*,

vs.

Cities Service Gas Company, a corporation, and all Operators, Producers and Takers of Natural Gas in the State of Oklahoma, and particularly in the Guymon-Hugoton Field, *Respondents*,

The School Land Commission of the State of Oklahoma and Texas County Land & Royalty Owners Association, *Interveners*.

CAUSE CD No. 1054

ORDER No. 19514

"REPORT OF THE COMMISSION

"This cause came on for hearing before the Corporation Commission of the State of Oklahoma in its Court Room in the Capitol Office Building, Oklahoma City, Oklahoma, on the 26th day of November, 1945, at 10:00 o'clock a.m., on the application of Peerless Oil and Gas Company, a corporation, and on the intervention of the School Land Commission of the State of Oklahoma and the Texas County Land and Royalty Owners Association, pursuant to order of the Commission setting the cause for hearing and proper and legal notice. The applicant, appearing by and through Earl Pruet, its attorney, the respondent Cities Service

Gas Company, a corporation, appearing by and through R. E. Cullison and Joe Rolston, Jr., the School Land Commission of the State of Oklahoma appearing by and through Walter Marlin and W. D. McBee, its attorneys, and the Texas County Land and Royalty Owners Association appearing in person, and the other interested parties appearing not, and the Commission being represented by Floyd Green, Conservation Attorney, and all parties who appeared and entered their appearances herein having announced ready for trial, the applicant and interveners presented their evidence and rested, and Cities Service Gas Company introduced its evidence and rested; and all of said parties having introduced rebuttal evidence, the Commission closed the case and took the matter under advisement.

"Now, on this 9th day of December, 1946, the Commission, having considered the matter in conference and each of the Commissioners having read the entire record herein and being well and sufficiently advised, is of the opinion that the application should be granted to the following extent and finds as follows:

"FINDINGS

"'1. That notice by publication of the filing of the application herein, the time and place of hearing thereon and the purpose of said hearing has been regularly given in all respects as required by law, and the Commission has jurisdiction of the subject matter embraced in said application and all parties interested therein and jurisdiction to issue and promulgate the hereinafter prescribed order.

"2. That Peerless Oil and Gas Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware and duly authorized to transact business in the State of Oklahoma.

"3. Cities Service Gas Company is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware and duly authorized to transact business in the State of Oklahoma.

"4. That this application involves the Guymon-Hugoton Field, which constitutes one common source of supply of gas, although there are three or more producing horizons that are interconnected, which are known as the Crider, Winfield, and Harrington horizons and are found at an approximate depth of 2,810 feet. There are approximately 300 wells in said pool, some of which are not now connected to pipeline and producing; that the virgin pressure in said pool was approximately 442 pounds, but at the present time it has been reduced to approximately 400 pounds; that the total reserves are estimated at seven trillion cubic feet of natural gas. The limits of the probable productive area of the Guymon-Hugoton pool in Texas County, Oklahoma, covers part of the following described townships, to-wit:

TOWNSHIPS:		RANGES:
1	North	12 to 17 E.C.M.
1, 2, 3 and 4	North	12 to 18 E.C.M.
	and	
5 and 6	North	12 to 19 E.C.M.

which area may be extended by the drilling of additional wells.

"5. Peerless Oil and Gas Company is the owner of valid and subsisting oil and gas leases covering approximately 110,000 acres of minerals in the common source of supply aforesaid, which oil and gas leases include leases covering

Section 8, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma,

and

Section 5, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma,

in which the two wells of Peerless Oil and Gas Company, referred to in applicant's petition, have been drilled.

"6. The Texas County Land and Royalty Owners Association and the School Land Commission of the State of Oklahoma are the owners of minerals situated and located in the common source of supply aforesaid and are therefore interested in the matters and things involved herein.

"7. Cities Service Gas Company, respondent herein, is the owner of various gas wells from which it is now and has been for a considerable length of time producing natural gas from the reservoir into which said well owned by Peerless Oil and Gas Company has been drilled.

"8. Cities Service Gas Company is engaged in the transportation of natural gas in and from the Guymon-Hugoton, Oklahoma, gas field for a compensation, hire, and otherwise, from the same common source of supply or reservoir of natural gas into which said well of applicant has been drilled as aforesaid.

"9. The production of natural gas in the Guymon-Hugoton gas field is in excess of the market demand.

"10. The Cities Service Gas Company is now and has been at all times involved herein engaged in the business of buying and selling natural gas in the Guymon-Hugoton, Oklahoma, gas field and in the State of Oklahoma, and is a common purchaser of natural gas within the meaning of the statutes of the State of Oklahoma defining common purchasers. Cities Service Gas Company purchases natural gas from more than fifty persons, firms and corporations in the State of Oklahoma.

"11. The Cities Service Gas Company is in fact a common purchaser of natural gas.

"12. The Cities Service Gas Company is now, and has been at all times involved herein, engaged in using the highways of the State of Oklahoma for the purpose of laying natural gas pipe lines for the purpose of transporting natural gas.

"13. Cities Service Gas Company is in fact and in law a common carrier of natural gas.

"14. Cities Service Gas Company is now and has been at all times involved herein, engaged in taking natural gas from a gas field, to-wit: the Guymon-Hugoton, Oklahoma, gas field, for purposes other than the purpose of developing a gas or oil field, or operating oil wells, or for the purpose of its own domestic use.

"15. Cities Service Gas Company, a corporation, respondent herein, produces and purchases natural gas in the State of Oklahoma, transports the same and sells the same both directly and indirectly to the public for light, heat and power.

"16. Cities Services Gas Company maintains and operates pipe lines for the transportation of natural gas in said Guymon-Hugoton, Oklahoma, gas field, one of which said pipe lines is in close proximity to said Section 8, in which the well of applicant involved herein has been drilled.

"17. That Cities Service Gas Company, respondent herein, qualified to do business in the State of Oklahoma on the 19th day of April, 1946, and thereby accepted and agreed to comply with the laws of the State of Oklahoma covering its operations thereafter.

"13. Said respondent qualified to do business in the State of Oklahoma with full knowledge of the laws of the State of Oklahoma relating to the ratable taking of natural gas and all statutes relating to natural gas and was thereafter a party in the case of *Oklahoma Natural Gas Company* v. *State*, 161 Okla. 104, 17 Pac.(2) 488, which decision required ratable taking of gas under and by virtue of an order similar to that sought in the instant case.

"19. That the operation of the respondent, Cities Service Gas Company, constitute it a transporter of natural gas.

"20. A bona fide dispute has arisen between the pplicant, Peerless Oil and Gas Company, a corporation, and respondent Cities Service Gas Company, as to the price, measurement and terms of the taking of natural gas by Cities Service Gas Company from the gas wells of Peerless Oil and Gas Company drilled into and producing from said common source of supply in Sections 5 and 8, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma.

"21. Peerless Oil and Gas Company, prior to the time of the filing of this action, made a tender to Cities Service Gas Company of the natural gas to be produced from the wells in said Sections 5 and 8, and Cities Service Gas Company signified its willingness to take the natural gas therefrom, but refused to pay more than 4¢ per thousand cubic feet of natural gas, measured at a pressure of 16.4 pounds absolute pressure per square inch, at the wellhead and refused to take natural gas from said wells unless applicant herein would dedicate all of its oil and gas leases covering approximately 110,000 acres of minerals in the Guymon-Hugoton pool for the life of said leases. A dispute as to price, measurement and terms of taking natural gas arose as a result thereof.

"22. Cities Service Gas Company, respondent herein, continued to refuse to take natural gas from said two wells unless applicant would dedicate all of its acreage in the field to Cities Service Gas Company at a price of 4¢ per thousand cubic feet at the wellhead for the life of the leases until long after the filing of this application when Peerless Oil and Gas Company, applicant herein, and Cities Service Gas Company, respondent herein, agreed that said wells be connected to the pipe line of Cities Service Gas Company and that Cities Service Gas Company would begin to take natural gas from said wells; that Cities Service Gas Company would begin making payment upon the purchase price of the natural gas taken by it from said wells at the rate of 4¢ per thousand cubic feet of na-

tural gas at the wellhead, plus ½ ¢ per thousand cubic feet for gathering and delivering charges, or a total of 4½ ¢ per thousand cubic feet delivered into the pipe lines of Cities Service Gas Company; without prejudice to a final determination of the controversy in regard to measurement and price pending before the Corporation Commission of the State of Oklahoma in the above entitled cause, and provided that in the event the Corporation Commission of the State of Oklahoma should fix a higher price of natural gas or a different measurement and such order should be finally upheld, Cities Service Gas Company would pay to Peerless Oil and Gas Company the difference between the amount so paid and the price so fixed by the Corporation Commission of the State of Oklahoma, all as evidenced by a stipulation on file herein.

"23. The persons and corporations operating pipe lines and transporting natural gas out of the Guymon-Hugoton, Oklahoma, gas field, own or control a greater portion of the oil and gas leases in said field and control the outlets for natural gas produced in said field, and have therefore been able to dictate and have dictated the price, measurement and terms of the taking of natural gas taken in the Guymon-Hugoton, Oklahoma, gas field. Producers without a connection have been required to accept the price, measurement and terms offered by operators of pipe lines in said field or shut down their wells.

"24. There is no competitive market of natural gas in the Guymon-Hugoton, Oklahoma, oil field, but said market has been stifled by reason of the control of acreage and markets by the pipe line operators in said field, and as a result natural gas is being taken out of the Guymon-Hugoton, Oklahoma, gas field, at a price far less than its actual, or fair market value, and at a price which is far less than the value of natural gas for heating and other purposes as compared to the value of other fuels.

"25. As a result of the controlled market, market prices, measurement and terms of taking of natural gas in the Guymon-Hugoton field, one of the great resources of the State of Oklahoma, to-wit: natural gas, is being taken out of the Guymon-Hugoton, Oklahoma, field and out of the State of Oklahoma at a price which is far less than its replacement value.

"26. Various purchasers of natural gas, in the Guymon-Hugoton field, purchase natural gas from different producers and contracts providing for different prices, terms and conditions.

"27. Cities Service Gas Company purchases natural gas in the Guymon-Hugoton, Oklahoma, gas field, under contracts containing different terms and conditions as evidenced by its contract with Skelly Oil Company, its contract with Republic Natural Gas Company, and its contract with Hagy, Harrington and Marsh.

"28. The operations of the respondent, Cities Service Gas Company, a corporation, constitute it a transporter of natural gas.

"29. The operations of respondent, Cities Service Gas Company, constitute it a common carrier.

"30. The operations of the respondent, Cities Service Gas Company, constitute it a common purchaser of natural gas.

"31. The operations of respondent, Cities Service Gas Company, constitute it a public utility.

"32. The taking of natural gas from the Guymon-Hugoton, Oklahoma, field, at prices and under terms and measurement now prevalent in said field results in and causes:

(a) Economic waste of a great natural resource, to-wit: natural gas;

(b) Actual physical waste of natural gas;

(c) Loss to the royalty owners in said field;

(d) Loss to the State of Oklahoma in revenues in the form of gross production taxes;

(e) Inequitable taking of natural gas from the common source of supply involved;

(f) Discrimination against various producers in the field.

"33. By reason of the dispute between the Peerless Oil and Gas Company, applicant herein, and the respondent, Cities Service Gas Company, a corporation, as to the price and terms of the taking of natural gas from said wells of applicant, this Commission has authority to fix and should fix a minimum price and terms for the taking of natural gas to be taken in the Guymon-Hugoton field.

"34. For the purpose of preventing waste, economic and physical, or natural gas, for the purpose of protecting correlative rights, and to insure the greatest ultimate recovery of natural gas from the common reservoir involved, this Commission should not permit natural gas to be taken out of the producing formations in the Guymon-Hugoton field, at a price less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch.

"ORDER

"IT IS THEREFORE ORDERED by the Corporation Commission of the State of Oklahoma, as follows:

"1. That no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton field in Texas County, Oklahoma, at a price, at the wellhead, of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch.

"2. This order shall be effective as of January 1st, 1947.

"DONE AND PERFORMED by the Corporation Commission at its office in the Capitol Office Building,

Oklahoma City, Oklahoma, this 9th day of December, 1946.

CORPORATION COMMISSION OF OKLAHOMA,
REFORD BOND, *Chairman;*
RAY O. WEEMS, *Vice-Chairman;*
WM. J. ARMSTRONG, *Commissioner.*

ATTEST:
TOM MCMURRAY,
Secretary."

APPENDIX "B"

"BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

"Peerless Oil and Gas Company, a corporation,

Applicant,

vs.

Cities Service Gas Company, a corporation,

Respondent.

CAUSE CD No. 1054

ORDER No. 19515

"REPORT OF THE COMMISSION

"This cause came on for hearing before the Corporation Commission of the State of Oklahoma in its Court Room in the Capitol Office Building, Oklahoma City, Oklahoma, on the 26th day of November, 1945, at 10 o'clock ...m., on the application of Peerless Oil & Gas Company, a corporation, as to the issues involved as between the applicant and respondent, Cities Service Gas Company, pursuant to order of the Commission setting the cause for hearing and notice published as required by law and personally served upon Cities Service Gas Company, a corporation. The applicant, appearing by and through Earl Pruet, its attorney, and the respondent, Cities Service Gas Company, a corporation, appearing by and through R. E. Cullison and Joe Rolston, Jr.; and the Commission was represented by Floyd Green, Conservation Attorney; and said parties having announced ready for trial,

the applicant presented its evidence and rested, and Cities Service Gas Company introduced its evidence and rested; and said parties having introduced rebuttal evidence, the Commission closed the case and took the matter under advisement.

"Now, on this 9th day of December, 1946, the Commission having considered the matter in conference and each of the Commissioners having read the entire record herein and being well and sufficiently advised, is of the opinion that the application should be granted to the following extent and finds as follows:

"FINDINGS

"1. That notice by publication of the filing of the application herein, the time and place of hearing thereon and the purpose of said hearing has been regularly given in all respects as required by law, and the Commission has jurisdiction of the subject matter embraced in said application and of all parties interested therein and jurisdiction to issue and promulgate the hereinafter prescribed order.

"2. That Peerless Oil & Gas Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware and duly authorized to transact business in the State of Oklahoma.

"3. Cities Service Gas Company is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware and duly authorized to transact business in the State of Oklahoma.

"4. The applicant is the owner of valid and subsisting oil and gas leases covering Section 8, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma.

"5. As provided by law and the rules and regulations of the Corporation Commission, applicant filed with the Corporation Commission of the State of Oklahoma notice of its intention to drill a well in said section.

"6. Peerless Oil and Gas Company has drilled a well for the production of natural gas located in the approximate center of said section, which said well was completed, equipped and ready for production on the 2nd day of May, 1945.

"7. Cities Service Gas Company, respondent herein, is the owner of various gas wells from which it is now and has been for a considerable length of time producing natural gas from the reservoir into which said well owned by Peerless Oil and Gas Company has been drilled.

"8. In producing natural gas from its said wells located in the Guymon-Hugoton, Oklahoma, gas field, Cities Service Gas Company has been, for a considerable period of time, draining natural gas from underneath said Section 8, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma, said drainage having been continuous from the time of the completion of each of the wells of Cities Service Gas Company to the date of the hearing herein, and each of said wells, owned and operated by Cities Service Gas Company in the Guymon-Hugoton, Oklahoma, gas field, have drained natural gas from underneath said Section 8 Township 4 North, Range 16 E.C.M., Texas County, Oklahoma, from the date of the completion of said Peerless Oil and Gas Company's well, on the 2nd day of May, 1945; that there has been material drainage from underneath said Section 8, practically all of which has been caused by Cities Service Gas Company.

"9. That each and all of the wells owned by Cities Service Gas Company, in the Guymon-Hugoton field, are drilled into the same common source of supply or reservoir of natural gas, into which the Peerless well hereinabove described, and has been producing and taking natural gas from such common source of supply or reservoir of gas.

"10. Cities Service Gas Company is engaged in the transportation of natural gas in and from the Guymon-Hugoton, Oklahoma, gas field, for compensation, hire,

and otherwise, and from the same common source of supply or reservoir of natural gas into which said well of applicant has been drilled as aforesaid.

"11. The production of natural gas in the Guymon-Hugoton gas field is in excess of the market demand.

"12. The Cities Service Gas Company is now and has been at all times involved herein engaged in the business of buying and selling natural gas in the Guymon-Hugoton, Oklahoma, gas field, and in the State of Oklahoma, and is a common purchaser of natural gas within the meaning of the statutes of the State of Oklahoma defining common purchasers. Cities Service Gas Company purchases natural gas from more than fifty persons, firms and corporations in the State of Oklahoma.

"13. The Cities Service Gas Company is in fact a common purchaser of natural gas.

"14. The Cities Service Gas Company is now, and has been at all times involved herein, engaged in using the highways of the State of Oklahoma for the purpose of laying natural gas pipe lines for the purpose of transporting natural gas.

"15. Cities Service Gas Company is in fact and in law a common carrier of natural gas.

"16. Cities Service Gas Company is now, and has been at all times involved herein, engaged in taking natural gas from a gas field, to-wit: the Guymon-Hugoton, Oklahoma, gas field, for purposes other than the purpose of developing a gas or oil field, or operating oil wells, or for the purpose of its own domestic use.

"17. Cities Service Gas Company, a corporation, respondent herein, produces and purchases natural gas in the State of Oklahoma, transports the same and sells the same both directly and indirectly to the public for light, heat and power.

"18. The sole business and operation of Peerless Oil & Gas Company in the Guymon-Hugoton, Oklahoma, gas field, is that it owns oil and gas leases covering considerable acreage in said field and has, pursuant to said leases, drilled several wells in said field, including the well above described and referred to.

"19. Cities Service Gas Company maintains and operates pipe lines for the transportation of natural gas in said Guymon-Hugoton, Oklahoma, gas field, one of which said pipe lines is in close proximity to said Section 8, in which the well of applicant involved herein has been drilled.

"20. That Cities Service Gas Company, respondent herein, qualified to do business in the State of Oklahoma on the 19th day of April, 1922, and thereby accepted and agreed to comply with the laws of the State of Oklahoma covering its operations thereafter.

"21. Said respondent qualified to do business in the State of Oklahoma with full knowledge of the laws of the State of Oklahoma relating to the ratable taking of natural gas and all statutes relating to natural gas, and was thereafter a party in the case of *Oklahoma Natural Gas Company* v. *State*, 161 Okla. 104, 17 Pac. (2d) 488, which decision required ratable taking of gas under and by virtue of an order similar to that sought in the instant case.

"22. That the operations of the respondent, Cities Service Gas Company, constitute it a transporter of natural gas.

"23. That on May 17, 1945, applicant herein tendered to Cities Service Gas Company, respondent herein, the natural gas to be produced from its said well in Section 8, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma.

"24. Again on June 14, 1945, applicant herein tendered to respondent natural gas to be produced from its said well in Section 8, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma.

"25. Each of said tenders, the first on May 7, 1945, and the second on June 14, 1945, were legal and proper tenders of natural gas and complied in all respects with the rules, regulations and orders of the Corporation Commission of the State of Oklahoma.

"26. Cities Service Gas Company, respondent herein, after being served with said tenders and before the filing of the within suit, signified its willingness to take natural gas from said well of Peerless Oil & Gas Company, applicant herein, but refused to pay more than four cents per M. cu. ft. at the wellhead for the natural gas measured at a pressure of 16.4 pounds absolute pressure per square inch, and refused to take and purchase natural gas from said well unless Peerless Oil & Gas Company, applicant herein, would dedicate all of its oil and gas leases covering approximately 110,000 acres of minerals in the Guymon-Hugoton, Oklahoma, oil field, to Cities Service Gas Company, respondent herein, for the life of said leases at said price and measurement. There arose as a result a bona fide dispute between Peerless Oil and Gas Company, applicant herein, and Cities Service Gas Company, respondent herein, as to the price, measurement and terms of the taking of natural gas by Cities Service Gas Company from said well of Peerless Oil & Gas Company located in said Section 8, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma.

"27. Applicant herein is also the owner of valid and subsisting oil and gas leases covering Section 5, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma.

"28. Pursuant to the statutes of the State of Oklahoma and the orders of the Corporation Commission, Peerless Oil and Gas Company gave notice of its intention to drill a well for the production of natural gas in the approximate center of said section.

"29. Pursuant to said notice, Peerless Oil & Gas Company drilled and completed a well for the production of natural gas in the approximate center of said

section, said well being completed in and producible from the same common source of supply as that into which the said well of Peerless Oil and Gas Company was drilled in said Section 8 and into which the wells of Cities Service Gas Company were also drilled. Said well of applicant, in said Section 5, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma, was completed on or prior to January 28, 1946, and on January 28, 1946, Peerless Oil & Gas Company made a tender of the natural gas to be produced from its said well in said Section 5 to Cities Service Gas Company at a price of six cents per M. cu. ft., or in case the parties were unable to agree, at a price and under terms to be prescribed by the Corporation Commission of the State of Oklahoma.

"30. With reference to said well in Section 5, Cities Service Gas Company signified its willingness to take natural gas therefrom but refused to pay more than four cents per M. cu. ft. of natural gas, measured at a pressure of 16.4 pounds absolute pressure per square inch, at the wellhead and refused to take natural gas from said well unless applicant herein would dedicate all of its oil and gas leases covering approximately 110,000 acres of minerals in said Guymon-Hugoton field to Cities Service Gas Company for the life of said leases.

"31. As a result thereof, a bona fide dispute has arisen between the applicant and the respondent, Cities Service Gas Company, with reference to the price, measurement and terms of taking of the natural gas to be produced from applicant's well in said Section 5.

"32. Cities Service Gas Company, respondent herein, continued to refuse to take natural gas from said two wells unless applicant would dedicate all of its acreage in the field to Cities Service Gas Company at a price of 4¢ per thousand cubic feet at the wellhead for the life of the leases until long after the filing of this application, when Peerless Oil & Gas Company, applicant herein, and Cities Service Gas Company, re-

spondent herein, agreed that said wells be connected to the pipe line of Cities Service Gas Company and that Cities Service Gas Company would begin to take natural gas from said wells; that Cities Service Gas Company would begin making payment upon the purchase price of the natural gas taken by it from said wells at the rate of 4¢ per thousand cubic feet of natural gas at the wellhead plus ½ ¢ per thousand cubic feet for gathering and delivering charges, or a total of 4½ ¢ per thousand cubic feet delivered into the pipe line of Cities Service Gas Company; without prejudice to a final determination of the controversy in regard to measurement and price pending before the Corporation Commission of the State of Oklahoma in the above entitled cause, and provided that in the event the Corporation Commission of the State of Oklahoma should fix a higher price for natural gas and/or a different measurement and such order should be finally upheld, Cities Service Gas Company would pay to Peerless Oil & Gas Company the difference between the amount so paid and the price so fixed by the Corporation Commission of the State of Oklahoma, all as evidenced by a stipulation on file herein.

"33. The persons and corporations operating pipe lines and transporting natural gas out of the Guymon-Hugoton, Oklahoma, gas field, own or control a greater portion of the oil and gas leases in said field and control the outlets for natural gas produced in said field, and have therefore been able to dictate and have dictated the price, measurement and terms of the taking of natural gas taken in the Guymon-Hugoton, Oklahoma, gas field. Producers without a connection have been required to accept the price, measurement and terms offered by operators of pipe lines in said field or shut down their wells.

"34. There is no competitive market of natural gas in the Guymon-Hugoton, Oklahoma, oil field, but said market has been stifled by reason of the control of acreage and markets by the pipe line operators in

said field, and as a result natural gas is being taken out of the Guymon-Hugoton, Oklahoma, gas field at a price far less than its actual, or fair market value, and at a price which is far less than the value of natural gas for heating and other purposes as compared to the value of other fuels.

"35. As a result of the controlled market, market prices, measurement and terms of taking of natural gas in the Guymon-Hugoton field, one of the great resources of the State of Oklahoma, to-wit: natural gas, is being taken out of the Guymon-Hugoton, Oklahoma, field, and out of the State of Oklahoma at a price which is far less than its replacement value.

"36. Various purchasers of natural gas, in the Guymon-Hugoton field, purchase natural gas from different producers under contracts providing for different prices, terms and conditions.

"37. Cities Service Gas Company purchases natural gas in the Guymon-Hugoton, Oklahoma, gas field, under contracts containing different terms and conditions, as evidenced by its contract with Skelly Oil Company, its contract with Republic Natural Gas Company, and its contract with Hagy, Harrington & Marsh.

"38. Cities Service Gas Company is now and at all times involved herein has been engaged in taking natural gas from a gas field, to-wit: the Guymon-Hugoton, Oklahoma, gas field, and in so doing is not taking natural gas for the purpose of developing a gas and oil field, or operating oil wells, or for the purpose of its own domestic use; and in so doing is draining natural gas from underneath reservoirs of another in said field, to-wit: Peerless Oil & Gas Company, applicant herein, and in so doing, Cities Service Gas Company is taking more than its proportionate share of the natural gas from said field and prevents Peerless Oil & Gas Company from taking its proportionate share of the natural gas from said field.

"39. The operations of the respondent, Cities Service Gas Company, a corporation, constitute it a transporter of natural gas.

"40. The operations of respondent, Cities Service Gas Company constitute it a common carrier.

"41. The operations of the respondent, Cities Service Gas Company, constitute it a common purchaser of natural gas.

"42. The operations of respondent, Cities Service Gas Company constitute it a public utility.

"43. Cities Service Gas Company, respondent herein, should be required to take gas ratably from Peerless Oil and Gas Company's well located in Section 8, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma, and from the well of Peerless Oil & Gas Company, located in Section 5, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma, for the following reasons and purposes, any one of which is sufficient:

(a) Respondent is a common purchaser of natural gas in the field involved;

(b) Respondent is a common carrier of natural gas in said field;

(c) Respondent is a transporter of natural gas in said field;

(d) Respondent is taking and will continue to take more than its proportionate part of the natural gas in said field unless it is required to take natural gas ratably from said wells;

(e) Cities Service Gas Company is draining gas from underneath said Sections 5 and 8, into which said Peerless Oil and Gas Company's wells have been drilled, and will continue to drain gas from underneath said Sections 5 and 8 until all the gas thereunder has been drained and Peerless Oil and Gas Company will be

prevented from taking its proportionate share of the natural gas in the field unless Cities Service Gas Company is required to take gas ratably from said wells of Peerless Oil & Gas Company;

(f) Production in said field is in excess of market demand and Cities Service Gas Company should be required to take natural gas ratably from said field in order to prevent waste, protect correlative rights and prevent unreasonable drainage from the reserves of another.

"44. The taking of natural gas from the Guymon-Hugoton, Oklahoma, field, at prices and under terms and measurement now prevalent in said field results in and causes:

(a) Economic waste of a great natural resource, to-wit: natural gas;

(b) Actual physical waste of natural gas;

(c) Loss to the royalty owners in said field;

(d) Loss to the State of Oklahoma in revenues in the form of gross production taxes;

(e) Inequitable taking of natural gas from the common source of supply involved;

(f) Discrimination against various producers in the field.

"45. By reason of the findings aforesaid, this Commission has authority to require and should require Cities Service Gas Company to take and continue to take natural gas from said wells of Peerless Oil & Gas Company ratably with the other wells in the field as ratable taking is prescribed in Order No. 17867 of the Commission.

"46. By reason of the findings aforesaid and particularly by reason of the dispute between the applicant and respondent as to the price and terms of the taking of natural gas from said wells, this Commis-

sion has authority to fix and should fix the price and terms of natural gas taken and to be taken by Cities Service Gas Company from said wells of Peerless Oil & Gas Company.

"47. For the purpose of preventing waste, economic and physical, of natural gas, for the purpose of protecting correlative rights, and to insure the greatest ultimate recovery of natural gas from the common reservoir involved, this Commission should not permit natural gas to be taken out of the producing formations in the Guymon-Hugoton field at a price of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds, absolute pressure per square inch.

"ORDER

"IT IS THEREFORE ORDERED by the Corporation Commission of the State of Oklahoma as follows:

"1. That the respondent, Cities Service Gas Company be and it is hereby required to take natural gas ratably from applicant's well located in Section 8, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma, in accordance with the formula for ratable taking prescribed in Order No. 17867 of this Commission.

"2. That the respondent, Cities Service Gas Company, be and it is hereby required to take natural gas ratably from applicant's well located in Section 5, Township 4 North, Range 16 E.C.M., Texas County, Oklahoma, in accordance with the formula for ratable taking prescribed in Order No. 17867 of this Commission.

"3. That respondent shall pay to applicant for the natural gas so taken not less than 7¢ per thousand cubic feet of natural gas at the wellhead, measured at a pressure of 14.65 pounds absolute pressure per square inch.

"4. That no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton field in Texas County, Oklahoma, for a price at the wellhead of less than 7¢ per thousand cubic feet of natural gas, measured at a pressure of 14.65 pounds absolute pressure per square inch.

"5. This order shall be effective as of January 1st, 1947.

"DONE AND PERFORMED by the Corporation Commission, at its office in the Capitol Office Building, Oklahoma City, Oklahoma, this the 9th day of December, 1946.

CORPORATION COMMISSION OF OKLAHOMA,
REFORD BOND, *Chairman;*
RAY O. WEEMS, *Vice-Chairman;*
WM. J. ARMSTRONG, *Commissioner.*

ATTEST:
TOM MCMURRAY,
Secretary."

APPENDIX "C"

"BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

"Peerless Oil and Gas Company, a corporation,
Applicant,

vs.

Cities Service Gas Company, a corporation, and all Operators, Producers and Takers of Natural Gas in the State of Oklahoma, and particularly in the Guymon-Hugoton Field, *Respondents.*

The School Land Commission of the State of Oklahoma and Texas County Land & Royalty Owners Association, *Interveners.*

CAUSE CD No. 1054

ORDER No. 19702

"REPORT OF THE COMMISSION

"This cause came on for hearing before the Corporation Commission of Oklahoma on the 31st day of January, 1947, at 1:30 o'clock p.m., in the Commission's Court Room, Capitol Office Building, Oklahoma City, Oklahoma; the Honorable Reford Bond, Chairman, Ray O. Weems, Vice-Chairman and Ray C. Jones, Commissioner, sitting. R. M. Williams, Attorney of Bartlesville and Harry Turner, Attorney of Oklahoma City, appeared for the applicant, Phillips Petroleum Company; Earl Pruet, Attorney of Oklahoma City, appeared for the respondent Peerless Oil & Gas Company, and Floyd Green, Conservation Attorney, appeared for the Commission.

"After hearing the cause, the matter was continued until February 4th, 1947, at 1:30 o'clock p.m.; for the purpose of hearing oral argument. On February 4th, 1947, after hearing oral argument and being well and sufficiently advised in the premises, the Commission denied the application and therefore finds as follows:

"FINDINGS

"1. That this is an application of the Phillips Petroleum Company, for an order vacating Orders Numbered 19514 and 19515 heretofore issued in this cause on the 9th day of December, 1946.

"2. That this Commission has jurisdiction over the subject matter herein, that notice has been given

in all respects as required by law, and that protests have been filed to the granting of the order.

"3. That this cause was originally heard prior to December 9th, 1946, and that Orders Numbered 19514 and 19515 were issued pursuant to notice regularly given and that the applicant herein, Phillips Petroleum Company had notice of the proceedings and did not enter an appearance therein.

"4. That Order No. 19514 had for its purpose the fixing of a minimum price for natural gas at the wellhead in the Guymon-Hugoton field, which price was applicable to all producers, purchasers and takers of gas in the field; that the applicant herein, Phillips Petroleum Company, is both a producer and taker of natural gas in the field and transports the gas produced from its leases in Texas County, across the Oklahoma line to a gasoline plant located in Texas, one-half mile south of the Oklahoma line adjacent to Texas County, Oklahoma; that all of the gas produced by Phillips Petroleum Company in Texas County, Oklahoma, is transported to said plant where 6/10ths of one gallon of liquid hydrocarbons are extracted from each thousand cubic feet of gas produced in Texas County, Oklahoma; that the residue gas is then transported by Phillips Petroleum Company from said plant to the nearby location where same is delivered to the Panhandle Eastern Pipe Line Company at a price presently in the amount of 4.67 cents per thousand cubic feet; that the applicant herein then transports daily some 80,000 gallons of liquid hydrocarbons extracted from the natural gas at the plant in Texas, to another plant owned by applicant near Borger, Texas, where the liquid hydrocarbons are then further refined and sold by the applicant herein; that the large percentage of the liquid hydrocarbons extracted is 26-70 gasoline which has a current market value of between 5 and 5¼ cents per gallon; that the applicant herein, Phillips Petroleum Company, is now realizing from the natural gas produced in the Guymon-Hugoton field, the equivalent of approximately 7¢ per thousand cubic

feet at the wellhead within the terms and meaning of Orders Nos. 19514 and 19515; that the applicant, Phillips Petroleum Company, did not see fit to introduce any evidence as to profits or leases from the production of natural gas in the Guymon-Hugoton field and since the application filed herein alleged hardship if forced to comply with Orders Nos. 19514 and 19515, it was incumbent upon the applicant to introduce proof showing wherein such hardship would occur.

"5. That applicant complains that Paragraph 1 of Order No. 19514 and Paragraph 4 of Order No. 19515 prohibit said applicant from producing any natural gas in the Guymon-Hugoton field, and taking same from the formation because of the requirement that said gas must be sold at a price of 7¢ per thousand cubic feet at the wellhead; that said orders were meant to prohibit the production of natural gas from the producing formations in said field unless same was sold at a price of 7¢ per thousand cubic feet on the measurement basis provided for in said orders, if same were sold, but if not sold, that said gas should be so utilized and/or sold, that the producer would realize therefrom the equivalent of 7¢ per thousand cubic feet at the wellhead and on the pressure basis provided for in Orders Nos. 19514 and 19515; that the applicant, Phillips Petroleum Company, is realizing from the utilization and sale of natural gas produced by it in the Guymon field, the equivalent of 7¢ per thousand cubic feet at the wellhead, on the pressure basis of measurement provided for in said orders for all natural gas produced by it in the Guymon-Hugoton field; therefore in that respect applicant is already complying with Orders Nos. 19514 and 19515.

"6. That inefficient and wasteful utilization of natural gas produced in said field have resulted and will result, unless producers in said field receive for said natural gas or realize the equivalent of 7¢ per thousand cubic feet of natural gas at the wellhead,

measured at a pressure of 14.65 pounds absolute pressure per square inch; that the price presently being paid for natural gas varies throughout the field with no uniform price and that this Commission, unless it fixes a uniform price for the field, is permitting discrimination in price which adversely affects many producers and royalty owners; that the price being paid has no relation to the intrinsic value of the natural gas and is not a comparable price with other fuels; that it has no relation to the replacement value of the natural gas and one of Oklahoma's natural resources is being dissipated and wasted all to the detriment of the producers, royalty owners, School Land Commission, and the State of Oklahoma, and unless a price is fixed that has some relation to its actual value, the inefficient and wasteful utilization of gas from the Hugoton field will result in great losses of one of Oklahoma's most valuable resources.

"7. That applicant herein, Phillips Petroleum Company, is not injured by the application of a 7¢ price of all gas produced by it in the Hugoton field since it is presently realizing approximately that amount at this time.

"8. That this application should be denied in the interest of preventing: (a) economic waste of a great natural resource, to-wit: natural gas; (b) actual physical waste of natural gas in the Hugoton field; (c) loss to the producers and royalty owners in said field; (d) loss to the State of Oklahoma in revenues in the form of gross production tax and loss to the schools of the State of Oklahoma in the form of lessening royalties accruing to the School Land Commission; (e) the inequitable taking of natural gas from the common source of supply owned by all; (f) discrimination as to prices paid throughout the field, which discrimination adversely effects many royalty owners and producers; (g) the inefficient and wasteful utilization of natural gas.

"9. That this application should be denied.

"ORDER

"IT IS THEREFORE ORDERED by the Corporation Commission of the State of Oklahoma, that this application to vacate Orders Numbered 19514 and 19515 heretofore issued by this Commission in this cause on the 9th day of December, 1946, be and the same is hereby denied.

"DONE AND PERFORMED this the 4th day of February, 1947.

CORPORATION COMMISSION OF OKLAHOMA,
REFORD BOND, *Chairman;*
RAY O. WEEMS, *Vice-Chairman;*

ATTEST:
TOM MCMURRAY,
Secretary."
(SEAL)

APPENDIX "D"

[MAJORITY OPINION]

"IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

"Cities Service Gas Company, a corporation,
Plaintiff in Error,

vs.

Peerless Oil and Gas Company, a corporation *et al.*,
Defendants in Error.

No. 32994

Phillips Petroleum Company, a corporation,
Plaintiff in Error,

vs.

State of Oklahoma *et al.*, *Defendants in Error.*

No. 33006

"SYLLABUS

"1. The grant of power to the Corporation Commission under 52 O.S. 1941, § 239 to regulate the taking of natural gas from a common source of supply 'so as to prevent waste, protect the interest of the public, and of all those having a right to produce therefrom,' by necessary implication includes the power

to employ such means as may be reasonably necessary to the accomplishment of the declared purposes and includes the power to fix a price consideration in the taking of gas when found necessary to the attainment of such ends.

"2. The provisions of 52 O.S. 1941, § 233, give the Corporation Commission authority to fix the price at which natural gas may be produced and taken from the field, under the circumstances and in the manner therein stated.

"3. Price control, like any other form of regulation, is unconstitutional only if arbitrary, discriminatory, or demonstrably irrelevant to the policy which the Legislature is free to adopt, and hence an unnecessary and unwarranted interference with individual liberty. A price fixing order of the Corporation Commission made pursuant to statute is to be tested by the same standards.

"4. The due process and equal protection provisions of the Federal and State Constitutions do not preclude the state, in the exercise of its power, to preserve the correlative rights of producers of natural gas from a common reservoir, from requiring one either to shut down its wells or take ratably from the other producer who has no outlet and pay the established field price for the gas so taken, such being but a practical or feasible alternative consistent with production by both to protect the one from drainage by the other.

"5. The Commerce clause of the Federal Constitution does not preclude the state in the production of local interests from fixing a uniform minimum price consideration as a condition of the taking of natural gas from a common reservoir because a producer there-

from will in the normal course of business sell and deliver gas in interstate commerce. The regulation is imposed before the operation of interstate commerce occurs.

Appeal from Order of Corporation Commission of Oklahoma fixing a minimum price consideration in the taking of natural gas from the Guymon-Hugoton field in Oklahoma, and from order for ratable taking of gas made in favor of the Peerless Oil and Gas Company. The Cities Service Gas Company appeals. The Phillips Petroleum Company appeals.

"AFFIRMED

"Vlenn W. Clark, R. E. Cullison and Joe Rolston, Jr., Oklahoma City, Oklahoma, for Cities Service Gas Company;

Don Emery, Rayburn L. Foster, R. B. F. Hummer, Harry D. Turner and R. M. Williams, for Phillips Petroleum Company;

Earl Pruet, Oklahoma City, for Peerless Oil and Gas Company and Texas County Land Royalty Owners Assn.;

Richardson, Shartel, Cochran & Pruet, of Counsel;

Mac Q. Williamson, Floyd Green, Earl Pruet, W. D. McBee, for Defendants in Error;

Floyd Green, John Blanton, Charles F. White, for State of Oklahoma;

W. D. McBee, for Commissioners of the Land Office;

T. Murray Robinson, *Amicus Curiae;*

Robinson, Shipp & Robertson, of Counsel.

WELCH, J.,

"Peerless Oil and Gas Company, owner of a gas well and certain oil and gas leases on lands located in the Guymon-Hugoton gas field in Texas County, filed

with the Corporation Commission an application for an order requiring Cities Service Gas Company to connect its pipe line to the gas well and take and receive the natural flow of gas from the well ratably with its taking of gas from other wells of the field, and further that the Commission fix the price at which said gas should be taken and fix the price for all natural gas produced in the Guymon-Hugoton gas field in Oklahoma. Peerless alleged drainage by Cities Service and failure of agreement with Cities Service for the taking of gas from its well, and particularly a disagreement as to the price for the gas.

"Cities Service filed answer admitting its ownership of a pipe line system and that it was taking gas from the field through its lines and stated an offer to take gas from the Peerless wells ratably with its taking of gas from other wells in the field and at the average price paid for gas in the field. Cities Service alleged a usage of its pipe line in the furtherance of a business of producing natural gas for transportation and sale in interstate Commerce and asserted that the Corporation Commission was without power or authority to regulate its facility and business and, particularly, to order the price and terms for taking or purchasing gas in the field.

"After hearing of the Peerless application had commenced the Corporation Commission permitted the State of Oklahoma, on relation of the Commissioners of the Land Office, to file petition in intervention. The Land Office alleged ownership in trust for the State of a large acreage of land in the gas field and surrounding areas. It asserted that monopolistic price and arbitrary measurements for gas prevailed in the field, and was resulting in dissipation and exhaustion of gas from the common source of supply at a fraction of its intrinsic values, and that such taking was resulting in wanton economic waste. The Land Office prayed that the Corporation Commission fix a minimum price and a certain standard of measurement applicable to all gas

in the field and to be applied upon its removal from the natural reservoir.

"The Commission published notice of the time and place of a hearing to be held upon the Land Office petition, with invitation to all persons interested to appear and be heard. The notices were directed to certain named companies and to 'all operators, purchasers, and takers of gas in Oklahoma, and particularly in, Guymon-Hugoton field in Texas County, Oklahoma.

"In the course of the proceeding a petition was filed requesting the Commission to fix a minimum price for gas in the field signed by several persons as royalty owners and under a designation as members of the Texas County Land and Royalty Owners' Association.

"The Commission, after the series of hearings above mentioned, and after hearing testimony from witnesses presented by Peerless, the Land Office, Cities Service and the testimony of various other persons, entered a general order that on and after a certain future date, therein mentioned, 'no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton field in Texas County, Oklahoma, at a price at the wellhead of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch.' The Commission issued a further order to become effective on the same date directed to Cities Service ordering that Company to take gas from the Peerless wells ratably with its taking from other wells in the field and as ratable taking is prescribed in a certain former general order of the Commission, and that Cities Service pay the Peerless for the gas so taken not less than 7¢ per thousand cubic feet wellhead price measured at a pressure of 14.16 pounds pressure per square inch.

"Subsequent to the effective date of these orders Phillips Petroleum Company filed an application to vacate or modify the price fixing provisions of the orders. After a hearing wherein evidence was intro-

duced, the Commission entered an order denying the application to vacate.

"Cities Service appeals from the two price fixing orders. Phillips appeals from these orders and from the order denying its application to vacate.

"During the pendency of the Peerless application Peerless and Cities Service entered into an agreement for a ratable taking of gas from the Peerless wells by Cities Service, leaving unsettled the price to be paid for the gas.

"The primary question presented in these appeals arises from the order of the Commission fixing a minimum price on natural gas in the field.

"Cities Service presents argument under the following statements:

'1. No constitutional or statutory power is granted Commission, either expressly or by necessary implication, to fix by general order the price or other terms for taking or purchasing natural gas in the field.

'2. 52 O.S. 1941, Section 233, purporting to authorize Commission in case of dispute to fix price and other terms for taking or purchasing natural gas as between individual parties, is unconstitutional because:

(a) It sets forth no policy or standard to guide Commission in acting thereunder (Articles IV and V, Oklahoma Constitution);

(b) It violates the equal protection clause of the Federal Constitution (Section 1, Article XIV, U. S. Constitution);

and,

(c) It violates the due process clauses of the Oklahoma and Federal Constitution (Section 7, Article II, and 14th Amendment; as well as Sections 2 and 23, Article II,

Oklahoma Constitution, and Section 59, Article V, Oklahoma Constitution).'

"3. If this Court should hold Commission under existing law is either expressly or impliedly granted natural gas price-fixing powers under some conceivable circumstances, the same are unconstitutional as applied herein because:

(a) Price fixing has no reasonable relationship to waste, protection of correlative rights, or conservation of natural resources;

(b) It casts a burden on, impedes and impairs interstate commerce in violation of the commerce clause of the Federal Constitution (Clause 3, Section 8, Article 1); and,

(c) It denies Cities due process and equal protection of the law (14th Amendment, Oklahoma Constitution).

"4. If this Court should hold Commission is under present laws granted constitutional or statutory price-fixing powers, then existing laws are not self-executing but require Commission, in advance of an attempt on its part to enforce the taking or purchasing of natural gas, to specify with clarity and particularity the elements constituting the basis of such taking or purchasing so as to enable the parties concerned to effectuate fully and fairly a completed contract.

"5. If this Court should hold Commission is granted under present laws constitutional and statutory and price-fixing powers and existing laws are self-executing, then Commission in exercising its authority thereunder is confined to ascertaining and applying the going or market price and other non-discriminatory equitable terms for taking or purchasing natural gas prevailing in the field.

"6. The orders of the Commission are void because of vagueness, indefiniteness, and uncertainty.

"7. Commission erred in denying Cities' motions and demurrers;

(a) Motion to allow inspection and copy of certain records and documents of Peerless material to judicial phase of case;

(b) Demurrer, motion to dismiss, and motion for judgment in judicial phase of the case;

(c) Combined demurrer, motion to dismiss, and motion for judgment in the legislative phase of the case;

(d) Motion to set aside findings of fact and conclusions of law in order entered by Commission in judicial phase of the case and substitute therefor certain findings of fact and conclusions of law submitted by Cities and for judgment;

(e) Motion for new trial in judicial phase of the case.

"8. The findings and orders of the Commission are not supported by substantial, competent evidence and are contrary to the undisputed evidence.

"9. Commission failed to grant Cities a fair and impartial trial and hearing in accordance with the due process clauses of the Oklahoma and Federal Constitutions (Section 7, Article II, Bill of Rights, Oklahoma Constitution; Section 1, Article XIV, U. S. Constitution);

(a) By refusing to inform Cities in advance of the trial of the case what rules of practice and procedure would be applied by Commission at the hearing thereof;

(b) By allowing the misjoinder of judicial and legislative matters;

(c) By erroneously consolidating judicial and legislative matters;

(d) By erroneously allowing Land Office to file petition in intervention and intervene in the case;

(e) By allowing a private citizen to make a statement and speech to the Commission during the course of the trial;

(f) By conducting a plebiscite of land and royalty owners while case was in hearing;

(g) By filing petitions with Federal Power Commission while trial was in progress stating Commission was interested in increasing price of natural gas;

(h) By allowing Commission's conservation attorney to participate and take an active part in trial of private dispute between Peerless and Cities;

(i) By admitting incompetent and hearsay evidence and testimony;

(j) By refusing to segregate and separate the evidence of Peerless, Land Office and others at the close of their testimony so Cities could know what evidence pertained to the judicial phase of the case and what evidence pertained to the legislative phase of the case;

(k) By Commission's refusing to recognize, apply and abide by its own subsisting orders.

"Since 1913, Laws 1913, Ch. 198, Secs. 1, 2, 3, 52 O.S. 1941, Sections 231, 232, 233, the statutes of this state have provided that owners might take, from a common source, amounts of gas proportionate to the natural flow of their respective wells, but not more than 25% of that natural flow without consent

of the Corporation Commission: that any person taking gas from a gas field, except for certain specified purposes 'shall take ratably from each owner of the gas in proportion to his interest in said gas, upon such terms as may be agreed upon between said owners and the party taking such, or in case they cannot agree at such a price and upon such terms as may be fixed by the Corporation Commission. * * *.'

"Obviously, the protection of the interest of all owners of the gas is the intent of the statute and such is the standard of guidance to the Corporation Commission acting thereunder.

"Various types of state regulatory schemes providing for ratable taking and designed to protect the 'co-equal rights' of the several owners of common source of supply have been sustained. *Ohio Oil Co.* v. *Indiana*, 177 U.S. 190, 44 L. ed. 729, 20 S. Ct. 576; *Bandini Petr. Co.* v. *Superior Ct.*, 284 U.S. 8, 76 L. ed. 136, 52 S. Ct. 103, 78 A.L.R. 826; *Patterson* v. *Stanolind Oil & Gas Co.*, 182 Okla. 155, 77 P. 2nd 83; *Patterson* v. *Stanolind Co.*, 305 U.S. 376, 83 L. ed. 231, 59 S. Ct. 259. In *Republic Natural Gas Co.* v. *State et al.*, 198 Okla. 350, 180 P. 2d 1009, an order of such an effect by the Corporation Commission was sustained.

"In reference to provisions of Sec. 233, *supra*, and an order of the Corporation Commission made pursuant thereto requiring producer of gas to take ratably from well of another producer in the field, it was held that a foreign corporation obtaining permission to do business and produce natural gas in this state may not question constitutionality of the statute. The decision of this court affirming the Commission was appealed to the United States Supreme Court. *Republic Natural Gas Co.* v. *State et al.*, 334 U.S. 62, 92 L. ed. 1212. That court held, in an opinion by Justice Frankfurter, that by reason of matters left open by the Commission's order, this court's judgment lacked the finality requisite to a review there. In the majority opinion

reference is made to the order of the Commission as going no further than to require ratable taking of gas and the probability that the Commission will be later asked to determine specific terms of the taking including the price to be paid for the gas. Reference is made to price fixing as being inherently provocative of constitutional claims and to the probability of additional federal question arising out of the controversy. Four members of the court joined in dissent. In a dissenting opinion by Justice Rutledge containing a discussion of the case on the merits, it is said:

> '* * * In * * * a line of cases beginning a half century ago with *Ohio Oil Co.* v. *Indiana*, 177 U.S. 190, 44 L. ed. 729, 20 S. Ct. 575, this Court has upheld various types of state regulatory schemes designed to prevent waste and to protect the "co-equal rights" of the several owners of a common source of supply. Those cases clearly recognize that the state regulation may be justified on alternative grounds, either to prevent waste or to adjust private correlative rights.'

"After stating a conclusion that a state may require ratable taking in the preservation of correlative rights in a common source of supply, it was further said:

> 'The remaining narrow issue is whether the most practical method of achieving a fair accommodation of the correlative rights of the parties is invalid because Republic is required to take and to pay for gas that it does not want—at least does not want if it must pay for it.
>
> * * * * *
>
> 'The fact that Republic is compelled either to purchase Peerless' gas or to carry it to market and account for the profits does not make the regulation unreasonable. If that were the sole cause for complaint, the state could take the more drastic step of requiring all the well owners to shut down completely until all were able to produce on a ratable basis or came to some agreement effective

to make this possible. It is clearly within the state's power to require Republic to compensate Peerless for the gas drained from under the Peerless land. *Patterson* v. *Stanolind Oil & Gas Co.*, 305 U.S. 376, 83 L. ed. 231, 59 S. Ct. 259. Here, instead of requiring Republic to make a cash payment based on the estimated amount of drainage, the commission has selected what is unquestionably a more accurate method of adjusting the correlative rights. Even if it could be assumed that this method imposed a somewhat heavier burden on Republic than possible alternatives, it does not follow that the method selected by the Commission is unconstitutional. For we have constantly recognized the propriety of allowing wide discretion to the administrative agencies who are best qualified to select the most reasonable solutions to the thorny problems that accompany regulation in this highly technical field. *Railroad Commission* v. *Rowan & N. Oil Co.*, 310 U.S. 573, 84 L. ed. 1368, 60 S. Ct. 1021. Keeping in mind the fact that property law is peculiarly a matter of local concern, the special difficulty of defining and regulating property rights in natural gas, the respect due to experts in this field, and the rather unusual facts this record presents, I cannot say that the state is without power to enter this order.

'It is suggested that the order, since it includes the requirement of purchase and not merely of transportation and accounting for profits, becomes invalid because it shifts from Peerless to Republic the business risk incident to ownership and sale of the gas. Possibly this might furnish a more serious basis for objection in materially different circumstances. But, apart from what has already been said, in those now presented I conceive no substantially greater harm to be possible from the order's operation, than depriving Republic of the rights to drain gas from beneath Peerless' lease without liability to pay for the gas so drained.

> 'This assumes that if the parties should be unable to agree upon terms the Commission will fix them in a manner taking due account of prevailing market conditions relevant to the price to be paid, as well as reasonable compensation for the use of Republic's facilities. With those limitations properly applied, it is hard to see what great business risk will be shifted to Republic. For, as we have already noted, the commodity is one not subject to storage, must be sold as soon as it is transported to the point of consumption, and therefore cannot be subject to possible wide fluctuation in selling price between the times of purchase and sale by Republic.'

"We think it is clear that the due process and equal protection provisions of the Federal and State Constitutions do not preclude the state, in the exercise of its power to preserve the correlative rights of producers of natural gas from a common pool, from requiring one either to shut down its wells or take ratably from the other producer who has no outlet under such terms as the parties may agree upon; or in default of agreement, to take upon such terms and price as may be fixed by the Corporation Commission consistent with equality in returns for gas taken in the field. Such device is but a practical or feasible alternative consistent with production by both to protect the one from drainage by the other.

"The Commission's order, made under the provisions of Sec. 233, *supra*, directing that Cities Service as a condition of its further taking of gas from the field, should take ratably from the wells of Peerless, is readily sustainable. The portion of the order directing payment for the gas so taken at not less than 7¢ per thousand cubic feet at the wellhead rests upon the Commission's general order prohibiting the taking of gas from the producing structures or formations in the field for a price at the wellhead of less than 7¢ per thousand cubic feet.

"In 1915 provision was made for regulation of the extraction of natural gas not only to prevent excessive drainage as between producers but for the prevention of waste and for the protection of the interest of the public and the interest of all those having a right to take from a common reservoir.

"It was provided, Laws 1915, Ch. 197, § 4, 52 O.S. 1941, § 239, that when the full production from a common source of supply of natural gas is in excess of the market demands, a producer from such common source of supply may take therefrom only such proportion as may be marketed without waste, and in such proportion as the natural flow of the well or wells of such producer bears to the total natural flow of the field, having due regard to the acreage drained by each well; provided that the Corporation Commission may permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable. The statute provides that 'the said commission is authorized and directed * * * to regulate the taking of natural gas from any or all such common sources of supply within the state, so as to prevent waste, protect the interest of the public, and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one source of supply as against another.'

"The succeeding Section 240 provided as follows:

> 'Every person, firm or corporation, now or hereafter engaged in the business of purchasing and selling natural gas in this state, shall be a common purchaser thereof, and shall purchase all of the natural gas which may be offered for sale, and which may reasonably be reached by its trunk lines, or gathering lines without discrimination in favor of one producer as against another, or in favor of any one source of supply as against another save as authorized by the Corporation Commission after due notice and hearing; but if any such person, firm or corporation, shall be un-

able to purchase all the gas so offered, then it shall purchase natural gas from each producer ratably. It shall be unlawful for any such common purchaser to discriminate between like grades and pressures of natural gas, or in favor of its own production, or of production in which it may be directly or indirectly interested, either in whole or in part; but for the purpose of prorating the natural gas to be marketed, such production shall be treated in like manner as that of any other producer or person, and shall be taken only in the ratable proportion that such production bears to the total production available for marketing. The Corporation Commission shall have authority to make regulations for the delivery, metering and equitable purchasing and taking of all such gas and shall have authority to relieve any such common purchaser, after due notice and hearing, from the duty of purchasing gas of an inferior quality or grade. (Laws 1915, Ch. 197, Sec. 5.)'

"Obviously the impelling reason for discrimination in the taking of gas from one source of supply as against another rests in economic consideration and it is obvious that a practical and ready means of preventing such discrimination appears with control of the price of gas at its original source, or at the 'wellhead' in each of the particular fields. Reference to protection of the interest of all those having a right to produce gas from a common source of supply directs attention to the owners of the land overlying the gas and such interests as they have conveyed. Doubtless because of the technical and financial requirements in taking gas from its natural place, it has long been the general practice of landowners to lease the privilege of taking gas from under their lands and usually in consideration of a royalty of 1/8th or a particular part of the gas so taken or its equivalent marketed. Because of such technical and financial requirements in the development of a gas field, and necessary to the marketing and commercial use of gas, landowners are usually

compelled to enter into such leasing arrangements as the only means of securing an exploration and development of their gas resources. In the very nature of the product, landowners cannot accept delivery of gas so produced but must trust to producers for a proper handling of their share of the production. Such reserved or royalty interests are transferable and oftimes are sold in whole or in part.

"As suggested by Justice Rutledge in *Republic Nat. Gas Co.* v. *State, supra:*

> '* * * Natural gas in place is volatile and fugitive, once a single outlet is opened. When extracted it cannot be stored in quantity, but must be marketed ultimately at burner tips in the time necessary for conveyance to them from the well mouth. The competitive struggle for the industry's rewards is particularly intense in the initial stage of developing a field. By the industry's very nature large outlays of capital are required for successful continuing production and marketing. All those factors however tend toward monoply once success has been achieved in a particular field.
>
> 'These peculiar qualities, moreover, have been reflected in the legal rights relating to the ownership of gas in place, as well as its extraction. They have been adapted to its nature and to that of the competitive struggle regarding it. Only a specialist in this branch of the law, which varies from state to state, can undertake to say with any reliable degree of precision what rights may be in particular situations. These difficulties, intensified by the competitive struggle for the product and the inadequacy of common-law ideas to control it, have forced both the states and the federal government to adopt extensive regulatory measures in recent years. This has been necessary both to conserve the public interest in this rapidly depleting natural resource and to secure fair adjustment of private rights in the industry. Rather than being

"a sacred, untouchable enclave of the common law, the field by its very nature lends itself especially to governmental intervention for such purposes. * * *"

"It is readily conceivable that in the course of development of a particular gas field, the ownership of producing and marketing facilities might become such, or be so combined, as to permit monopolistic practices. Under the circumstances prices for gas might be established having no relation to the market value of gas prevailing throughout the natural gas industry, and in other fields of commensurate development costs, and having no relation to the market value of other natural resources and products in competitive usage. On the other hand, a like result might obtain from economic warfare between competing producers and marketers. Under either of such circumstances prices might be so reduced that landowners or royalty holders or particular leaseholders would have their interests in the gas exhausted, dissipated and taken, without having received any reasonable compensation, and each suffer waste of a valuable reversion.

"Likewise the taking of gas under such circumstances would be inimical to the public interest. Like other natural resource, the subject of private ownership and exploitation, natural gas is a taxable resource. The tax is applied to the gross production and finally measured by the market value or price of the thing produced or reduced to personal possession. The taking of gas from a field, when the taking price of the gas is substantially lower than the price prevailing in other gas fields having commensurate production costs, and at prices having no relation to the market value of other of the natural resources of competitive usage, leads to an exhaustion of such gas without it having borne its fair share of taxation.

"Natural gas being exhaustible and of various valuable usage, the pubic interest extends to its conservation. Undoubtedly the price at which gas may be

obtained has an influence upon the ultimate purpose for which gas may be taken and used, and when the price for gas is substantially lower than its intrinsic value or lower than the market price of products of similar usage, a wasteful use of the gas is apt to occur.

"The relationship of price to conservation is suggested in the following expression from the concluding paragraph of the opinion in *Quinton Relief Oil & Gas Co.* v. *Corporation Commission*, 101 Okla. 164, 224 Pac. 156:

> '* * * Natural gas has twice the heating units of artificial gas, and taking into consideration the convenience of natural gas, it is intrinsically worth more than artificial gas; its market value being from $2 to $3 per 1,000 cubic feet. The amount of carbon black produced from 1,000 cubic feet of natural gas has a market value of about 10 cents. It, therefore, is obvious that the state, in the proper exercise of its police power and in conservation of so valuable a natural resource as natural gas, may prohibit the wasteful utilization of the same in the interest of the public welfare.'

"The impelling reason for or cause of discrimination in the taking of gas from one source of supply as against another, and the dilemma of the landowners growing out of private contract for the sale of gas without his interest being represented, is suggested in the following expression found in *Oklahoma Natural Gas Corp.* v. *State et al.*, 161 Okla. 104, 17 P. 2d 488:

> 'It would be a very efficient scheme to circumvent the proration law for a purchaser of gas operating by pipe line, which it has to have in order to successfuly handle gas, to take more gas in one place on a low cost than a rival operating on a higher purchase cost depending on contract, and by a system of reciprocity, allow its competitor in another pool to take more on the cheap rate. Thus it would be to the advantage of the

friendly pipe lines, and very much to the disadvantage of the unsuspecting landowner. Hence the necessity for putting somewhere the power to get a check upon this and as far as possible prevent it and equalize.'

"We are of the opinion that such considerations as above discussed occupied the legislative mind and motivated the enactment of the 1915 Act. In the 1915 Act the grant of power to the Corporation Commission to regulate the taking of natural gas from any source of supply, so as to protect the interest of all those having a right to produce therefrom, by necessary implication, includes the power to fix a minimum price on the gas as a condition of the taking, when found reasonably necessary to the accomplishment of that purpose. Likewise the grant of power to regulate, with directions that such power be exercised so as to prevent waste and protect the interest of the public, necessarily implies a power to fix prices as a condition of the taking of gas when otherwise, and because of prevailing prices, the public interest might suffer

"It is well settled that the state in exercise of its police power may regulate the taking of natural gas in the protection of the public interest and in preservation of private correlative rights. *Quinton Relief Oil & Gas Co.* v. *Corp. Comm., supra; Patterson* v. *Stanolind Oil & Gas Co.*, 182 Okla. 155, 77 Pac. 2d 83 and *Republic Natural Gas Co.* v. *State, supra.*

"Such policy of the law making body of the state is expressed in the 1915 Act. In the nature of the subject matter the Legislature was compelled to leave to another agency of the state the duty of bringing about the result pointed out by the statute. As has been noted, under Section 239, *supra*, the Commission is charged with the duty of regulating the taking of gas from a common source of supply. The standard to guide the Commission in acting thereunder is the prevention of waste, the protection of the interest of the public, and the protection of the interest of all

those having a right to produce from such common source of supply. There is no invalid delegation of power by reason of uncertainty in the stated criterion and the Act does not confer arbitrary and uncontrolled powers. The price fixing feature of the Commission's order is but a means of securing the purpose for which the Act was passed, or is the instrumentality employed by the Commission to carry out the legislative will and it is limited in its use to the effecting of the expressed purpose. The validity of the order rests in its reasonableness and relevancy to the policy the Legislature was free to adopt.

"As we stated in *Nebbie* v. *New York*, 291 U.S. 502, 78 L. ed. 940:

> 'Price control, like any other form of regulation, is unconstitutional only if arbitrary, discriminatory, or demonstrably irrelevant to the policy the Legislature is free to adopt, and hence an unnecessary and unwarranted interference with individual liberty.'

"See *Herrin* v. *Arnold*, 183 Okla. 392, 82 P. 2d 977.

"The Commission had before it the sworn testimony of persons who stated they were engineers of long experience in the production and marketing of natural gas. These witnesses gave testimony to the effect that studies had been made of the character of the natural gas in the Guymon-Hugoton field, and that studies had been made of the intrinsic value of natural gas or the value of gas as compared to the market value of other fuels in the relation to the heat units each would produce. With these factors considered, it was stated that the commercial heat value of the gas in the Guymon-Hugoton field, tested with consideration to its delivery and sale at a certain central point of commercial usage, and with subtraction of nominal transportation costs to such central point of commercial usage, is in excess of 10¢ per 1,000 cubic feet. It was stated that large blocks of acreage in the Guymon-

Hugoton field are under lease to a comparatively few companies who own the only pipe line outlets from the field, and that competition in the price of gas is not an element in the taking of gas in the field; that the gas is being taken from the field at prices at the wellhead ranging from 3.6¢ to 5¢ per 1,000 cubic feet measured on a basis of 2 pounds pressure per square inch above atmospheric pressure; that gas is being taken from the field and sold away from the field under unit of measurement of less than 2 pounds above atmospheric pressure. Various opinions were expressed by these witnesses who related long records of experience in the gas industry. It was stated that taking of gas from the field at prices of 3.6¢ to 5¢ per 1,000 cubic feet constituted economic waste and that such prices were conducive of physical waste and that to prevent economic and physical waste the minimum price for gas in the field should be 10¢ per 1,000 cubic feet.

"An employee of the State School Land Commission gave testimony to the effect that the State owned 49,600 acres of land located in Texas County, 30,160 acres of which was under lease with 6,099.92 acres being held as producing leaseholds; that the Land Office was receiving royalty from such productions on the basis of 4¢ per 1,000 cubic feet for gas at the wellhead, and in some instances on the basis of 5¢ at the wellhead and that one producer from a large acreage was offering to pay 3.34 cents.

"The testimony abundantly supports a conclusion that the conditions under which gas is being taken from the field is injurious to the interest of the public at large, and inimical to the interest of a substantial group such as landowners and others and is resulting in economic waste and conducive to physical waste. The testimony demonstrates that the price fixed as a condition of the further taking of gas from the field is reasonable and not beyond the requirements of the situation sought to be corrected, and will not result in discriminations.

"The Corporation Commission has heretofore exercised its power of fixing prices at which natural gas may be produced and taken. As early as 1920, after the prescribed notice and hearing, the Commission fixed the price of 9¢ per M.C.F. for gas in the Cushing field. And in 1944, acting specifically in view of the national emergency, the Commission, after notice and hearing, authorized the taking of natural gas for the manufacture of carbon black, but fixed the price to be paid for the gas so produced and used. And it was specified that the continued effectiveness of the permit should depend on the maintaining of the fixed price.

"In this connection we observe the following demonstrations of a well known rule of construction. In *Foot* v. *Town of Watonga*, 37 Okl. 43, 130 Pac. 597 (598) this court said:

> 'It is clear, under the Oklahoma statutes, that the license of a foreign insurance company expires on the last day of February next after its issue. Art. XIX of the Oklahoma Constitution and the Oklahoma statutes, hereinabove referred to, permit the construction that the payment of the gross premiums tax on or before the expiration of the license year on the last day of February is exacted for the privilege of doing business in the state during that license year and as a condition precedent to the issuance of a license for the ensuing year. Such has been the uniform and long-continued construction of the executive department charged with the administration of the statutes. The long-continued construction of a statute by a department of the government charged with its execution is entitled to great weight and should not be overturned without cogent reasons. The Legislature of Oklahoma has convened many times during this period of administrative construction without expressing its disapproval. That silence may be regarded as acquiescence in or approval of the administrative construction. Similar statutory provisions have been so construed.'

"Cities Service contends the order appealed from impedes and impairs interstate commerce in violation of the commerce clause of the Federal Constitution. In *Interstate Natural Gas Company* v. *Federal Power Commission*, 67 S. Ct. 1482, 331 U.S. 682, 91 L. ed. 1742, in a case involving the jurisdiction of the Federal Power Commission, we note this expression:

> 'In denying the Federal Power Commission jurisdiction to regulate the production or gathering of natural gas, it was not the purpose of Congress to free companies such as petitioner from effective public control. The purpose of that restriction was, rather, to preserve in the States powers of regulation in areas in which the States are constitutionally competent to act. * * *
>
> 'Clearly, among the powers thus reserved to the States is the power to regulate the physical production and gathering of natural gas in the interest of conservation or of any other consideration of legitimate local concern.'

"Here the Corporation Commission has fixed a minimum price for gas in a natural common reservoir; such price to be applied at the wellhead as a condition of the taking. The regulation applies to the production of natural gas and though it results in an incidental effect upon the sale price for gas after the gas has been reduced to possession, the subsequent sale of the gas for delivery into another state does not brand the Commission order as a regulation of interstate commerce. The regulation is imposed before any operations of interstate commerce occur. In *Parker, Director of Agriculture et al.* v. *Brown*, 317 U.S. 341, it is said:

> '* * * No case has gone so far as to hold that a state could not license or otherwise regulate the sale of articles within the state because the buyer, after processing and packing them, will in the normal course of business, sell and ship them in interstate commerce.'

"We do not perceive that the commerce clause of the Federal Constitution precludes the state in the protection of local interests from fixing a uniform minimum price consideration as a condition of the taking of natural gas from a common reservoir because a producer therefrom may have contracted or will contract for sale and delivery of his share of the production outside the state, or because a purchaser from such producer will sell and transport the gas in interstate commerce.

"The general order of the Commission fixing the minimum price for gas taken from the field as a part of the order requiring Cities Service to take ratably from the Peerless wells and as applied to Cities Service has the effect of requiring Cities Service to take ratably from Peerless and pay for the gas so taken at a price equal to the minimum price it must obtain for gas from its own wells offered at the well. If it may be said that under the price fixing order, Cities Service, with ownership of pipe line facilities, might take gas from its own wells and after payment of public charges and royalty claims on the gas on a basis of the minimum price fixed by the State, run the gas across the state line and there with profit make disposition of the gas at prices below the minimum fixed by the state, it does not follow that it has a right to use its pipe line facilities to gather gas from other wells on such basis, in otherwise disregard of price regulations, or that it may so use its wells as to effect a drainage from others without liability having relation to the price regulation.

"Undisputedly, the production from the Cities Service wells was resulting in drainage of the area where the Peerless wells were located and Cities Service offered to take ratably from the Peerless wells with its taking from its own wells. The effect was an offer to take the gas at the average price prevailing in the field or on the terms of a 'common purchasee' of gas in the field. Cities Service suffered no prejudice to its

rights in the fact that the Commission saw fit to investigate field conditions after dispute has arisen growing out of drainage from Peerless wells, or in the fact that a fixed price for gas was established. The order prohibiting Cities Service from taking gas from its wells except that it take ratably from the Peerless wells, insofar as it fixes the price for the gas so taken, is the same as that required of any purchaser of gas from the field. There occurs no greater invasion of Cities Service rights than depriving it of the right to drain gas from beneath the Peerless lease without paying for it. The overall effect of the order is to furnish a practical alternative, consistent with production by both Cities Service and Peerless, to protect Peerless from drainage by Cities Service.

"We find no basis in the due process and equal protection clauses of the Federal and State Constitutions for condemning the orders in their application to Cities Service.

"Cities Service complains of certain rulings in reference to certain pleadings filed and complains of the Commission's conduct and rulings in the course of the various hearings held leading up to the promulgation of the orders here under attack.

"The orders are legislative in character and subject in a large measure to the rules and principles by which the validity of statutes are determined. In the hearings preceding the orders, and not for violation thereof, the rules and principles of procedure obtaining in the enactment of a statute more nearly apply than the strict rules applicable to law courts.

"We have examined the record and find substantial evidence to support the Commission's findings and no error of law is committed.

"Phillips Petroleum Company in application to the Commission to vacate the orders introduced testimony to the effect that it owns oil and gas leases on several thousands of acres of land in the Guymon-Hugoton

field, and several producing gas wells thereon, and was presently taking several millions cubic feet of gas daily from such wells; that Phillips sells no gas produced from said field in the State of Oklahoma, but gathers gas from its wells through its own gathering system to a central point in the State of Texas where it processes the gas and extracts therefrom natural gasoline and other hydrocarbons and sells the residue gas; that it sells such residue gas to Panhandle Eastern Pipe Line Company at 4¢ per 1,000 cubic feet; that it has agreed to sell and deliver to Panhandle Eastern all of the gas it produces from 175,000 acres under lease in Texas County, subject to its right to extract natural gasoline and other liquid hydrocarbons from said gas prior to the delivery of such gas to Panhandle Eastern at the said central point in Texas.

"Phillips here adopts the brief of Cities Service and with enlargement of argument here present similar contentions concerning the authority of the Commission to make the orders appealed from and the constitutionality of the orders appealed from.

"Our discussion of the Cities Service appeal is here applicable. We find no basis in the due process and equal protection clause of the Federal and State Constitutions for condemning the orders appealed from in their application to Phillips.

"The orders appealed from are affirmed.

"Davison, C. J., Arnold, V. C. J., Corn and Johnson, JJ. Concur.

"Gibson, Luttrell, Halley and O'Neal, JJ. Dissent."

APPENDIX "D"

[DISSENTING OPINION]

"IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

"Cities Service Gas Company, a corporation,
Plaintiff in Error,

vs.

Peerless Oil and Gas Company, a corporation *et al.,*
Defendants in Error.

No. 32994

Phillips Petroleum Company, a corporation,
Plaintiff in Error,

vs.

State of Oklahoma *et al., Defendants in Error.*

No. 33006

HALIEY, J. (dissenting):

"There are two conclusions in the majority opinion in which I cannot concur. I cannot agree that the Corporation Commission has been given authority by the Legislature to make a general order fixing the price of gas for an entire gas field or common source of supply. I cannot agree that the Commission has the authority to require Cities Service to pay to Peerless a price for gas produced in the Guymon-Hugoton field,

substantially above the current market price prevailing in that field. It is admitted that if the general price-fixing order for the entire field is authorized, then the price ordered paid to Peerless would necessarily follow the general price-fixing order is not within the powers granted to the Corporation Commission, and that Cities Service should only be required to pay Peerless the current market price prevailing in that field.

"The majority opinion does not claim that general price-fixing authority for a common source of supply has been expressly granted to the Commission. It does conclude that such authority for a common source of supply has been expressly granted to the Commission. It does conclude that such authority is necessarily implied as a means of carrying out the express powers given the Commission to regulate the production of gas, the prevention of waste, the protection of co-equal rights, and the interests of the state and its citizens. These are all worthy objectives. The conservation of a great natural resource challenges the best efforts of all, but does not warrant the Corporation Commission in exercising powers not delegated to it by the Oklahoma Legislature.

"The statutes granting authority to the Corporation Commission to regulate the production of gas are generally referred to as the Acts of 1913 and 1915. The applicable portion of the 1913 Act, Ch. 198, Page 440, Sec. 3 (Sec. 233, Title 52, O.S. 1941), is as follows:

> 'Any person, firm or corporation, taking gas from a gas field, except for purposes of developing a gas or oil field and operating oil wells, and for the purpose of his own domestic use, shall take ratably from each owner of the gas in proportion to his interest in said gas, upon such terms as may be agreed upon between said owners, and the party taking such, or in case they cannot agree, at such a price and upon such terms as may be fixed by the Corporation Commission after notice

and hearing; provided, that each owner shall be required to deliver his gas to a common point of delivery on or adjacent to the surface overlying such gas.'

"In 1915 the following Act, being Ch. 197, Sec. 5 (Sec. 240, Title 52, O.S. 1941), was enacted:

'Every person, firm or corporation, now or hereafter engaged in the business of purchasing and selling natural gas in this state, shall be a common purchaser thereof, and shall purchase all of the natural gas which may be offered for sale, and which may reasonably be reached by its trunk lines, or gathering lines, without discrimination in favor of any one source of supply as against another save as authorized by the Corporation Commission after due notice and hearing; but if any such person, firm or corporation shall be unable to purchase all the gas so offered, then it shall purchase natural gas from each producer ratably. It shall be unlawful for any such common purchaser to discriminate between like grades and pressures of natural gas, or, in favor of its own production, or of production in which it may be directly or indirectly interested, either in whole or in part, but for the purpose of prorating the natural gas to be marketed, such production shall be treated in like manner as that of any other producer or person, and shall be taken only in the ratable proportion that such production bears to the total production available for marketing. The Corporation Commission shall have authority to make regulations for the delivery, metering and equitable purchasing and taking of all such gas and shall have the authority to relieve any such common purchaser, after due notice and hearing, from the duty of purchasing gas of an inferior quality or grade.'

"Sec. 2, Ch. 197, Session Laws of 1915 (Sec. 237, Title 52, O.S. 1941) defines the term 'waste' as follows:

'* * * That the term "waste," as used herein, in addition to its ordinary meaning, shall include escape of natural gas in commercial quantities into the open air, the intentional drowning with water of a gas stratum capable of producing gas in commercial quantities, underground waste, the permitting of any natural gas well to wastefully burn, and the wasteful utilization of such gas.'

"The foregoing definition of waste was enlarged by the Legislature in 1933 and in 1935, and the term 'wasteful utilization' was changed to 'inefficient utilization.'

"It is a cardinal rule of statutory construction that the primary aim is to arrive at the intention of the Legislature. This ancient rule was announced in *U. S. v. Temple*, 105 U.S. 97, 26 L. ed. 967, in the following words:

'Our duty is to read the statute according to the natural and obvious import of the language, without resorting to subtle and forced construction, for the purpose of either limiting or extending its operation. When the language is plain, we have no right to insert words or phrases so as to incorporate in the statute a new and distinct provision.'

"Again in *Russett School District No. C-8 v. Askew*, 193 Okla. 102, 141 P. 2d 575, this court stated in the body of the opinion:

'As has often been said, the cardinal rule in such cases is to ascertain and give effect to the legislative intention. That intention is to be first sought in the language of the statute itself, and if it is there plainly expressed, it must be followed without further inquiry.'

"The majority opinion correctly states the rule of construction to the effect that where an officer or government agency charged with the duty of administer-

ing a law construes the law and such construction is acquiesced in for a long period of time, such construction should be given great weight by the courts when called upon to construe such law. However, I am unable to agree that the record before us discloses that the Corporation Commission, charged with the duty of administering the law relating to the production of gas, has construed the regulatory Acts as giving it the authority to fix the price of gas produced from a reservoir, except where seller and buyer fail to agree upon a price, or that such construction has been long acquiesced in.

"During the more than thirty years that the Commission has been charged with the authority to regulate the production of gas, there is shown only a single instance where it fixed the price of gas for a field or common source of supply. In 1920 the Oklahoma Natural Gas Co. was taking gas from the Cushing field in Creek County at 6¢ per MCF, and selling it to consumers. The producers were threatening to disconnect their wells. They appealed to the Commission to fix a higher price. The Commission entered an order fixing the price for the entire Cushing field at 10¢ per MCF. This order was not appealed from, and it is not shown how long it was effective. There had evidently been a previous agreement as to price. It was not shown whether all, or what per cent, of the producers joined in the application to the Commission.

"In 1924 the Commission entered an order prohibting the use of gas for the manufacture of carbon black. The order was appealed from to this court, which affirmed the order on the ground that the use complained of was a 'wasteful utilization' of gas. The case is reported as *Quinton Relief Oil & Gas Co.* v. *Commission*, 101 Okla. 164, 224 P. 156. The court held that Ch. 197, Session Laws of 1915, conferring upon the Commission the power to make rules and regulations to prevent the 'wasteful utilization' of

natural gas, also gave that body the power to define what uses are within the scope of that term.

"In 1937, in the *Application of Jackson*, 179 Okla. 577, 66 P. 2d 1101, this court upheld an order authorizing the use of gas for the manufacture of carbon black as not being a 'wasteful utilization.' Reference is made to the *Quinton case* above, where such use was held to be wasteful, and it is held that if the Commission could determine what is 'wasteful utilization,' it could also determine what use is not wasteful.

"In 1944, the War Production Board requested the Commission to enter an order granting authority to use natural gas for the manufacture of carbon black in the Guymon-Hugoton field. The order was issued and the price to be paid fixed at 5¢ per MCF, being approximately the market price in the field. The order was not appealed from. It was an emergency war order.

"The above record does not support the claim that the Corporation Commission has construed the statutes mentioned as giving it the power to fix the price of gas for an entire field. During the years these statutes have been in effect, most of the major gas fields of Oklahoma have been discovered and developed. I agree that 'implied powers' flow from a grant of express powers, and that they are those powers necessary or incidental to the exercise of the express powers. The power to fix prices is a drastic one. In *H. F. Wilcox Oil & Gas Co.* v. *Walker*, 169 Okla. 33, 32 P. 2d 1044, this court announced the rule relative to implied powers as follows:

> 'It is well established that the authority of the Commission is definitely limited to the power expressly or by necessary implication granted to it by the Constitution and the statutes.'

"That case involved the proration of oil, but the same principle is applicable to the authority of the Commission with respect to gas.

"The majority opinion quotes extensively from the dissenting opinion by Justice Rutledge in the case of *Republic Natural Gas Co.* v. *State et al.*, 334 U.S. 62, 92 L. ed. 1212. However reasonable and persuasive that dissenting opinion, concurred in by three other members of the court, may be, it is not the law.

"If it had been the intention of our Legislature to grant to the Commission the power to fix the price of gas at the wellhead for an entire field, the addition or inclusion of a few simple words in the statutes granting regulatory authority to the Commission would have settled the matter beyond doubt. Why did the Legislature expressly grant authority to fix the price of gas where seller and buyer fail to agree, and fail completely to grant such authority in the vastly wider and more important field of fixing the price over an entire field or common source of supply? It is incredible that the Legislature would expressly grant such authority in a narrow field and leave it to be implied in a vastly wider and more important area. A gas field, or common source of supply, is the basic unit to which conservation orders are generally applicable. The order of the Commission, which is approved by the majority opinion, means that the Commission may fix the price of gas in every field in the state. The production of oil is under the jurisdiction of the Commission under similar statutes authorizing the prevention of waste, the protection of co-equal rights, and conservation, yet the Commission has never asserted that it had the power to fix the price of oil. It is true that oil may be stored and transported in various ways, while gas cannot be stored and must be transported by pipe line.

"It is not my view that conditions do not exist or may not hereafter arise in the Guymon-Hugoton field which may justify drastic regulatory measures by the Commission. The producers who have no pipe line facilities are wholly dependent upon those who have such outlets. These facts have prompted the Legislature to give the Commission express powers to pro-

hibit discrimination and to protect the interests of all parties. The land owner is especially interested because he cannot receive, store or distribute his share of the gas produced from his land, but is dependent upon the limited number of purchasers in the field. It may be that the royalty owners are not receiving their proper share of the proceeds of gas produced and marketed from their land. If they are not receiving their just shares under the terms of their lease contracts, they should seek relief in the courts and not before the Corporation Commission. It may be that gas selling at a price lower than its intrinsic value, but this does not justify the Commission in fixing the price until the Legislature has given it such power by clear and unmistakable terms or by necessary implication.

"The evidence shows that no physical waste is being practiced in the Guymon-Hugoton field. The only venting of gas is in the drilling and completion of wells, which is expressly allowed by statute. There is no claim of wasteful utilization. The gas is being sold for fuel, light, or power—all useful purposes.

"The evidence as to the effect of price fixing to prevent economic waste is too vague and nebulous to justify serious consideration. It is based largely upon the comparative values of competitive fuels, such as coal and oil, and if followed in the Guymon-Hugoton field, the price of gas there would be so high that producers could not possibly compete with gas produced from other fields in Oklahoma, or in other states; and if the order of the Corporation Commission is made effective, there might result a forced shut-down of the entire field, depriving the state and its interested citizens of their right to compete in the open market in disposing of their gas.

"The price fixed by the Commission, where seller and buyer are unable to agree upon a price, should be the current market price prevailing in the field. Any other price would be unfair, discriminatory, and inequitable.

"If the Legislature had intended to give the Corporation Commission authority to fix the price of natural gas in every gas field in the state, such authority would have been expressly given. Failure to express such intention is proof that no such intention existed. To read into the statutes such drastic power is nothing short of legislation by judicial construction, and for the foregoing reasons I respectfully dissent.

APPENDIX "E"

"IN THE SUPREME COURT OF THE
STATE OF KANSAS

No. 37,921

"Kansas-Nebraska Natural Gas Company, Inc., a Corporation, Appellant, v. State Corporation Commission of the State of Kansas, Jeff A. Robertson, Chairman and Commissioner, DeWitt M. Stiles, Commissioner, and Charles M. Warren, Commissioner, as members of the State Corporation Commission of the State of Kansas, and their respective successors in office, Appellees.

Appeal from Finney district court: Ray H. Calihan, Judge. Opinion filed October 7, 1950. Affirmed.

No. 37,920

"Northern Natural Gas Company, a Corporation, Appellant v. The State Corporation Commission of the State of Kansas and Jeff A. Robertson, Chairman, DeWitt M. Stiles, Member, Charles M. Warren, Member of said Commission, and their successors in office, Appellees.

Appeal from Finney district court; Ray H. Calihan, Judge. Opinion filed October 7, 1950. Affirmed.

No. 37,924

"Panhandle Eastern Pipe Line Company, a corporation, Appellant v. The State Corporation Commission of the State of Kansas, Jeff A. Robertson, Chairman and Commissioner, DeWitt M. Stiles, Commissioner and Charles M. Warren, Commissioner, as members of the State Corporation Commission of the State of Kansas, and their respective successors in office, Appellees.

Appeal from Seward district court; Ray H. Calihan, judge *pro tem.* Opinion filed October 7, 1950. Affirmed.

"SYLLABUS BY THE COURT

"1. Under the Federal Natural Gas Act of June 21, 1938 (Ch. 556, 52 Stat. 821, 15 U.S.C.A. § 717) the jurisdiction of the Federal Power Commission does not extend to intrastate transportation or sale of natural gas, or to the local distribution of natural gas, or to the facilities used for such distribution, or to the production or gathering of natural gas.

"2. In this state the production and distribution of natural gas for light, fuel and power is a business of a public nature, the control of which belongs to the state. (Following *La Harpe* v. *Gas Co.*, 69 Kan. 97, 76 Pac. 448.)

"3. The dominant purpose of our statutes pertaining to the production and conservation of natural gas. (G.S. 1947 Supp. 55-701 to 55-713) is to prohibit waste of natural gas in Kansas, not only in the manner and under the conditions of its production, but for such purposes as would constitute waste.

"4. The statute is also designed to protect the relative rights of the owners of real property from which natural gas is produced from a common source of supply.

"5. The statutes place authority in the State Corporation Commission, on proper application made to it, to hear the evidence and to make appropriate orders to prevent waste of natural gas in its production, distribution or sale in this state, and to so regulate the taking of natural gas from a common source of supply as to prevent inequitable or unfair taking and to prevent unreasonable discrimination in favor of or against any producer of gas from such common source of supply.

"6. Our statute gives the Corporation Commission authority to make an order fixing a minimum wellhead price for natural gas taken from a common source of supply if the evidence before the Commission justifies its conclusion that such an order is necessary in order to prevent waste and to secure the relative rights of owners of real property from which gas is produced from a common source of supply.

"7. Such an order, if applied to the Hugoton gas field in Kansas, is not void as being in violation of section 17, article 2, of our Constitution.

N. F. Cosgrove, of Topeka, argued the cause, and James D. Conway, of Hastings, Nebraska, and D. B. Lang, of Scott City, were with him on the briefs for the appellant Kansas-Nebraska Natural Gas Company, Inc.

Mark H. Adams, of Wichita, argued the cause, and Lawrence I. Shaw, of Omaha, Nebraska, and A. M. Fleming, of Garden City, were with him on the briefs for the appellant Northern Natural Gas Company.

Louis R. Gates, of Kansas City, argued the cause, and Mark H. Adams, of Wichita, and Edw. H. Lange,

of Kansas City, Missouri, were with him on the briefs for the appellant Panhandle Eastern Pipe Line Company.

Jay Kyle, General Counsel, State Corporation Commission of Topeka; R. C. Woodward, Special Counsel, of El Dorado, and Howard T. Fleeson and Dale H. Stuckey, both of Wichita, of Counsel, argued the cause and were on the briefs for the appellees.

"The opinion of the court was delivered by

"HARVEY, C. J.: These consolidated appeals are from judgments of the district court, which upon review of an interim order of the State Corporation Commission fixing a minimum price of eight cents per thousand feet at the well head for natural gas taken from the Hugoton gas field, found the same lawful and reasonable and directed their enforcement.

"What is commonly spoken of as the Hugoton gas field is approximately 60 miles long and 40 miles wide, covering parts of several counties situated in the southwest corner of Kansas and extending south across Texas County, Oklahoma, and into one or more counties of northern Texas. We are concerned here with only that part of the Hugoton gas field which is in Kansas. It is said to be the largest known reservoir of natural gas and is found at a depth of from about 2600 to 2900 feet in a porous formation about 50 feet thick. It was discovered near Hugoton in 1922, but it was not until about 1929 that its possibilities for domestic and industrial purposes had been fully realized. At the time of the hearing before the Commission about 1000 wells had been drilled and pipe lines had been laid to convey the gas to many cities and communities in Kansas and also in Colorado, Nebraska and states north, as far as Minneapolis, and east to cities in Michigan and points between. Several million feet of natural gas per day were being taken from the wells. The supply was greatly in excess of the market demands. Many of the producers had not been able to market their gas through any of the pipe

lines. Prices being paid to producers varied from four to eight cents per thousand cubic feet. There was really no open market for it—the producers had to accept what the pipe line companies would offer to pay.

"On February 6, 1948, the Southwest Kansas Royalty Owners Association, a non-profit corporation composed of about 1200 members and eighteen individuals, each the owner of mineral interests in real property in the Hugoton gas field, filed a petition with the Corporation Commission which alleged that under the land owned by the petitioners and others in the natural gas reservoir and source of supply known as the Hugoton gas field, which constitutes a natural resource which should be conserved and the waste of which should be prohibited by the Commission, and stated particulars not necessary to be noted here in view of an amended petition in which it was alleged the preventable waste existed. The petition was received and given docket No. 35,154-C (C-1868 Conservation Division). Each of the appellants here intervened and filed a written protest, and the Cities Service Gas Company filed a motion to dismiss. After due notice to all interested parties a pretrial hearing was had July 19 and 20, 1948, of oral and written arguments as to the legal questions involved, including jurisdiction of the Commission, during which the petitioners were given leave to file an amended petition, and a date was fixed for the hearing of evidence, the Commission reserving its ruling upon the legal questions. The amended petition was filed August 4, 1948. Hearings were had from October 18th through the 22nd and December 13th through the 15th at which evidence was offered. On February 18, 1949, the commission filed its interim order, which sufficiently sets forth the questions presented by the amended petition and the ruling of the commission thereon, the pertinent portions of which are as follows:

"The interim order recited the consideration of the evidence and the arguments and briefs of counsel, the

filing of the petition and amended petition, and stated that the petitions, as amended, requested that the Commission:

'(a) Institute an investigation into the issues raised by the Amended Petition,

'(b) Establish a uniform minimum price at which gas may be taken out of the producing structures in the Hugoton Field in Kansas of not less than 10 cents per M.C.F.,

'(c) Require all purchasers and takers of gas in and from the Hugoton Field to take ratably from each completed well in the field,

'(d) Establish atmospheric pressure as the base for measurement of the natural gas taken from the Hugoton Field.'

"Paragraph 2 recites the hearings and notices therefor, and

'At the conclusion of these proceedings, all of the questions of fact and of law were taken under advisement by the Commission.

'3. Gas Conservation Rule 822-201 of this Commission is state-wide in its application. Among other terms, it defines "Gas, Cubic Foot" as the volume of gas required to fill one cubic foot of space at a temperature of 60 degrees Fahrenheit and under an absolute pressure of 16.4 pounds. To provide for a different pressure base in the Hugoton Basic Order would require amendment of this state-wide rule. These proceedings, noticed as applicable only to the Kansas Hugoton Field, are not competent to affect an amendment to a state-wide rule or regulation. The Commission, having so limited this inquiry, is without jurisdiction here to establish a pressure base differing from the base set forth in the above noted Gas Conservation Rule. However, issues fairly raised in this proceeding make it appear to the Commis-

sion that an investigation on a state-wide basis should be initiated to determine whether Rule 822-201 should be amended and the Commission is this day entering its order in Docket No. 34780-C, (C-1825) instituting such an investigation.

'4. The Commission has jurisdiction and authority to determine the value of gas at the wellhead in the Kansas Hugoton Field and to require that no gas may be taken out of the producing structures unless the takers of such gas attribute such value to the gas for purposes of payment to the producer, landowner, lease-holder, or royalty owner, and to fix a minimum wellhead price at which natural gas may be taken from the Kansas Hugoton Field, when such determination and requirement or fixing of price is a necessary or appropriate means of giving effect to the intent and purpose of the statutes relating to the production and conservation of natural gas (G. S., 1947 Supp., 55-701 to 55-713, incl.). * * *

'5. The record in this proceeding does not explore fully all the factors which the Commission deems it necessary to consider in arriving at a final determination as to the value of gas at the wellhead in the Kansas Hugoton Field or as to what minimum wellhead price should be fixed for the sale of natural gas. To secure the further information it requires, the Commission is this date, on its own motion, entering its order instituting an investigation in Docket No. C-164. However, undisputed evidence now before the Commission in this record establishes that in order to give effect to all the intents and purposes of the statutes relating to production and conservation of natural gas, it is *necessay* and appropriate for the Commission to determine, pending completion of the investigation today instituted in Docket No. C-164, that the fair and reasonable value of natural gas at the wellhead in the Hugoton Field is at least eight cents per thousand cubic feet, and

that the taking of gas out of the field without attributing such value thereto for purposes of payment to the producers, landowners and royalty owners is not conducive to the fulfillment of the intents and purposes of the statute relating to the production and conservation of natural gas and should be prevented. . . .

'(6) No person, firm or corporation taking gas from the Hugoton Field should take or cause such gas to be taken out of the producing structures or formations thereof without attributing thereto for purposes of payment to the producers, landowners, leaseowners and royalty owners a fair and reasonable value at the wellhead of at least eight cents per thousand cubic feet of gas.'

"Paragraph 7 pertains to the keeping of books of gas taken from the field and provides:

'Pending completion of the investigation in Docket No. C-164 instituted today, which investigation may result in modification of the determination of the value of gas.' * * *

"It further provides that those taking the gas should be required to make actual payments of the differences to the persons entitled thereto, or deposit or impound the funds in their own treasury or give bond for such payment.

'8. It is not established in the record now considered that ratable-taking within the meaning of the statutes above referred to is not being accomplished. It has been strongly urged by the applicants herein that the Basic Order for the Kansas Hugoton Field does not require purchasers within that field to take ratably from each developed well. The Commission's desire to fulfill completely the purpose and intent of the laws relating to the production and conservation of natural gas prompts it to explore more fully the conditions and circumstances related to applicants' con-

tentions. It is therefore, entering its order in Docket No. C-164 instituting an investigation to determine whether the Basic Proration Order, applicable to the Hugoton Field, should be amended to further insure ratable-taking within the meaning of the gas conservation laws.

'IT IS, THEREFORE, BY THE COMMISSION ORDERED: That from and after the effective date of this order and until the further order of the Commission in this docket or in Docket No. C-164 following or in the course of the investigation today instituted:

'1. No person, firm or corporation taking gas from the Hugoton Field shall take or cause such gas to be taken out of the producing structures or formations thereof without attributing thereto for purposes of payment to the producers, landowners, leaseowners and royalty owners a fair and reasonable value at the wellhead of not less than eight cents per thousand cubic feet. * * *

'4. This order shall take effect and be enforced from and after 12:01 a.m., March 1, 1949, and shall remain in force and effect until the further order of this Commission.

'The Commission hereby retains jurisdiction of this cause and of the subject matter and the parties hereto for such other and further orders as the circumstances may require.'

"On the date the Commission filed its interim order in docket No. 35-154-C (C-1868) it made an order in docket No. C-164 by which it determined, on the Commission's own motion, that an investigation should be instituted to develop and explore all the facts and circumstances pertinent to a determination of the value of gas at the wellhead in the Kansas Hugoton gas field and as to what minimum wellhead price should be fixed for the sale of such gas, hearings pursuant to such investigation to be held upon proper

notice at such times and places as the Commission might order.

"On February 23, 1949, the Commission filed its memorandum opinion, setting out its reason for making the interim order. This included a history of the proceeding, of our legislative history relating to the production and conservation of natural gas, and the history of the development of the Hugoton gas field, and found authority for its interim order in our statute (G.S. 1947 Supp. 55-701 to 55-713). The Commission on the same date issued an order in docket No. C-164 by which, on its own motion, it instituted an investigation, with hearings to be held thereon after due notice, for the purpose of determining whether existing orders, rules and regulations were sufficient in scope to require ratable taking from each and every well in the field, and whether, under existing orders, rules and regulations, it was necessary to make amendments, alterations and changes therein for the protection of correlative rights, conservation of natural gas, orderly development of the field, ratable taking, and for such other purposes as might be deemed *ncessary*. On the same date the Commission, on its own motion, made an order in docket No. 34,780-C (C-1825) for further consideration of the unit of measurement known as 'Gas Cubic Foot,' defined in rule 822-201 of the general rules and regulations for the conservation of crude oil and natural gas.

"Each of the appellants filed a motion for rehearing, which motions were considered by the Commission and overruled. Whereupon the appellants filed their respective actions for judicial review of the interim order of the Commission by the district court, as provided in G.S. 1947 Supp. 55-606, as authorized by 55-707. These actions were heard together by the district court on September 12 and 13, 1949, and taken under advisement by the court. On September 24, 1949, the district court made its findings and judgment in each of the actions as follow. The court found:

'1. That the Interim Order entered by the State Corporation Commission of the State of Kansas, one of the defendants herein, in its Docket 35154-C (C-1868) on the 18th day of February, 1949, was a lawful and reasonable order:

'2. That said Interim Order here before this court on a petition for review under G.S. 1947 Supp., 55-707, should be upheld and sustained.

'IT IS THEREFORE BY THE COURT ORDERED, ADJUDGED AND DECREED that said Interim Order entered by The State Corporation Commission of the State of Kansas, one of the defendants herein, in its Docket 35154-C (C-1868) on the 18th day of February, 1949, be and the same is hereby upheld and sustained. That the costs of review in this court be assessed to the plaintiff.

'RAY H. CALLIHAN, *District Judge.*'

"Each of the plaintiffs filed a motion for a new trial in the district court, which was considered by the court and overruled, and each of them timely appealed to this court, where the cases were consolidated for hearing.

"We turn now to the consideration of the legal questions presented. Appellants contend that since they are engaged in the business of transporting natural gas in interstate commerce they are governed wholly by the Federal Natural Gas Act of June 21, 1938 (Ch. 556, 52 Stat. 821, 15 U.S.C.A. § 717). This is 'AN ACT TO regulate the transportation and sale of natural gas in interstate commerce, and for other purposes.' It first declares the 'necessity for regulation of natural-gas companies,' contains a declaration of policy, and specifies the application of its provisions with exemptions thereto. The pertinent portions read:

'SECTION 1. (a) As disclosed in reports of the Federal Trade Commission made pursuant to S. Res. 83 (Seventieth Congress, first session) and

other reports made pursuant to the authority of Congress, it is hereby declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.

'(b) The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, *but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.*' (Emphasis supplied.)

"The question appears to have been settled in *Federal Power Com'n* v. *Panhandle Eastern Pipe Line Co.*, 172 F. 2d 57. There Panhandle (the appellant here in No. 37-924) in September, 1948, organized the Hugoton Producing Company, transferred to it gas leases on 97,000 acres of land in the Hugoton gas field in Kansas, reserving the option to purchase gas produced therefrom after a date named, paid Hugoton $675,000 in cash and took back from it all of its outstanding capital stock, which it undertook to distribute in dividends to its stockholders. The Federal Power Commission sued to enjoin the transfer because its approval of the transaction had not been obtained. From an adverse decision in the district court it appealed. The United States Circuit Court of Appeals, Third Circuit, affirmed, and in the opinion (by Goodrich) used the following language:

'The controversy here arises out of the statute known as the Natural Gas Act passed in 1938.

That statute by its first section declares that federal regulation in the matters of transportation of *naural* gas and the sale thereof in interstate and foreign commerce is necessary in the public interest. There is no doubt that Panhandle is transporting and selling natural gas in interstate commerce and that under section 1 of the Act such transportation and sale by the company are subject to its provisions. The last sentence of the first section of the statute, however, carves out from the subject matter to be regulated a very important exception. The words are: "* * * but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of the natural gas." 15 U.S.C.A. § 717(b). * * *

'That there is a connection between the handling of matters in a local gas field and interstate transportation and sale of gas cannot be denied. No doubt Congress could have gone much further than it did in fixing the scope of federal regulation. But it clearly and intentionally drew a line short of where it could have gone.'

"On *certiorari* this was affirmed in *Federal Power Com'n* v. *Panhandle Co.*, 337 U.S. 498, 69 S. Ct. 1251, 93 L. Ed. 1949, where it was held:

'1. Section 1(b) of the Natural Gas Act, excluding "the production or gathering of natural gas" from the Commission's jurisdiction, left the transfer of gas leases to state regulation and outside the scope of the Commission's regulatory powers. Pp. 502-505.'

"In the opinion (pp. 509-513) it was said:

'The legislative history of this Act is replete with evidence of the care taken by Congress to keep the power over the production and gathering of gas within the states. This probably occurred

because the state legislatures, in the interests of conservation, had delegated broad and elaborate power to their regulatory bodies over all aspects of producing gas. (See, for example, Kansas Gen. Stat. §§ 55-701 to 55-713 (1947 Supp.); Mich. Stat. Ann., c. 97, §§ 13.138(1)-13.140(10) Supp. 1947); Okla. Stat. Ann., tit. 52, c. 3, §§ 81-247; Texas Rev. Civ. Stat., tit. 102, Art. 6008 *et seq.* (Vernon, 1925, with Supp. 1948); La. Gen. Stat. §§ 4766-4826.2.) The Natural Gas Act was designed to supplement state power and to produce a harmonious and comprehensive regulation of the industry. Neither state nor federal regulatory body was to encroach upon the jurisdiction of the other. Congress enacted this Act after full consideration of the problems of production and distribution. It considered the state interests as well as the national interest. It had both producers and consumers in mind. Legislative adjustments were made to reconcile the conflicting views.'

"These decisions have not been set aside or modified. From them and from the statute itself it is clear that the Federal Natural Gas Act has no application to intrastate transportation or sale of natural gas, or to its local distribution, or to its production, or gathering. Certainly it was not designed to limit or destroy the authority of states in which natural gas is found to conserve natural gas and to prevent waste in its production, gathering, distribution or sale. Congress made it clear such a result would not follow, and in doing so took cognizance of the specific Kansas statute here involved and of statutes of other states designed to conserve natural gas and to prevent waste in its production, gathering, distribution or sale.

"Appellants contend the legislature has not given the Commission authority to fix a wellhead price for natural gas. We wish to make it clear that appellants do not contend the state has no authority to fix such

a price when it deems such action necessary to conserve natural gas, by a direct act of the legislature, or by an act specifically authorizing the Commission to do so. Indeed, we interpret their position as conceding the state has such authority. Hence, there is no purpose or necessity in discussing such authority here. We do no more than refer to the fact that as early as 1904, in *La Harpe* v. *Gas Co.*; 69 Kan. 97, 76 Pac. 448, it was held:

> 'The production and distribution of natural gas for light, fuel and power is a business of a public nature, the control of which belongs to the state.'

"That doctrine has inhered in our subsequent statutes and decisions.

"Our first statute dealing specifically with 'the production and conservation of natural gas' was enacted in 1935 (Ch. 213, Laws 1935) and was embodied in our General Statutes of 1935 as sections 55-701 to 55-711. The statute was rewritten in 1945 (Ch. 233, Laws 1945) and now appears in G.S. 1947 Supp. as sections 55-701 to 55-713. The pertinent portions of the statute may be quoted or summarized as follows:

> 'That the production of natural gas in the state of Kansas in such manner and under such conditions and for such purposes as to constitute waste is hereby prohibited. (G.S. 1947 Supp. 55-701.)
>
> 'That the term "waste" as herein used, in addition to its ordinary meaning, shall include economic waste, underground waste and surface waste. Economic as used in this act, shall mean the use of natural gas in any manner or process except for efficient light, fuel, carbon black manufacturing and repressuring, or for chemical or other processes by which such gas is efficiently converted into a solid or a liquid substance. The term "common source of supply" wherever used in this act, shall include that portion lying within this state

of any gas reservoir lying partly within and partly without this state. The term "commission" as used herein shall mean the state corporation commission of the state of Kansas, its successors, or such other commission or board as may hereafter be vested with jurisdiction over the subject matter of this act. (G.S. 1947 Supp. 55-792.)

"That whenever the available production of natural gas from any common source of supply is in excess of the market demands for such gas from such common source of supply, or whenever the market demands for natural gas from any common source of supply can be fulfilled only by the production of natural gas therefrom under conditions constituting waste as herein defined, or whenever the commission finds and determines that the orderly development of, and production of natural gas from, any common source of supply requires the exercise of its jurisdiction, then any person, firm or corporation having the right to produce natural gas therefrom, may produce only such portion of all the natural gas that may be currently produced without waste and to satisfy the market demands, as will permit each developed lease to ultimately produce approximately the amount of gas underlying such developed lease and currently produce proportionately with other developed leases in said common source of supply without uncompensated cognizance drainage between separately-owned, developed leases or parts thereof: The commission shall so regulate the taking of natural gas from any and all such common sources of supply within the state as to prevent the inequitable or unfair taking from such common source of supply by any person, firm or corporation and to prevent unreasonable discrimination in favor of or against any producer in any such common source of supply. * * * (G.S. 1947 Supp. 55-703.)

> 'The commission shall promulgate such rules and regulations as may be necessary for the prevention of waste as defined by this act, the protection of all water, oil or gas-bearing strata encountered in any well drilled in such common source of supply, ascertaining the several factors entering into the determination of the productive capacity of each well, the total productive capacity of all wells in the common source of supply, the establishment of such other standard or standards as the commission may find proper to determine the productive capacity of each well and of all wells in such common source of supply, and as the commission may find necessary and proper to carry out the spirit and purpose of this act: * * *.' (G.S. 1947 Supp. 55-704.)

"Other provisions of the statute pertain to procedure and other details which are not in question.

"The dominant purpose of this statute is to prohibit waste of natural gas in Kansas, not only in the manner and under the conditions of its production, but also in its production for such purposes as would constitute waste. In order that the term 'waste' should not be narrowly construed the statute makes it clear that it is to include economic, underground and surface waste, and the term 'economic waste' is defined. These provisions were for the purpose, if necessary, of expanding the meaning of the term 'waste' and not for the purpose of limiting such meaning. The statute also deals with the rights of owners of property under which there is a common source of supply of natural gas. We think the statute is broad enough to authorize the Commission to make any rule or order to prohibit waste of natural gas, upon proper application made to it, if the evidence discloses waste in the manner or conditions or purpose of its production. It is true the statute did not specifically authorize the Commission to fix a wellhead minimum price to be paid for gas produced. It did not forbid the Commission to do so if and when the evidence disclosed the fixing

of such price would tend to prevent waste and the inequitable and unfair taking of gas from a common source of supply. Hence, the legal question presented by appellants, that the statute did not authorize the Commission to make the interim order complained of, is not well taken.

"We shall not attempt a detailed recital of the evidence upon which the Commission apparently relied in fixing a minimum wellhead price of eights cents per thousand cubic feet of gas to be taken from the Hugoton field. The testimony is lengthy and explained or illustrated by numerous maps, charts and tables of figures. The witnesses who testified upon the subject were well educated along those lines and had years of experience in production and marketing of gas and economics as applied thereto, and were outstanding writers upon that subject. Their qualifications were not questioned, neither was there any contention that any of them in any way was biased or prejudiced. They gave it as their judgment that one of the best ways to conserve gas and prevent waste in the Hugoton gas field is to fix a minimum wellhead price for gas. The lowest figure stated by any of them was eight cents per thousand cubic feet. Others put the minimum figure higher. This evidence was not contradicted by the appellants. They appear to have presented their defense before the Commission and the trial court, and their appeal here is upon legal questions and not upon questions of fact. We think the Commission was justified in finding upon the evidence before it that to prevent waste of gas in the Hugoton field a minimum wellhead price of eights cents per thousand cubic feet was justified, and that the trial court correctly found the order of the Commission in this respect to be reasonable. We take note of the fact that the Commission did not regard this as a final order. The order was made upon the evidence then before the Commission, which on its own motion transferred the matter to docket No. C-164 for further study.

"Appellants contend the order of the Commission constitutes a special law, being limited solely to the Kansas Hugoton gas field, and therefore violates section 17, article 2, of our Constitution, which reads:

> 'All laws of a general nature shall have a uniform operation throughout the state; and in all cases where a general law can be made applicable, no special law shall be enacted; and whether or not a law enacted is repugnant to this provision of the Constitution shall be construed and determined by the courts of the state.'

"This provision of our constitution was intended to apply to laws enacted by the state legislature. Appellants contend it has been held to apply to any law purporting to be made by public authority and cite some authorities from other jurisdictions tending to support that view. No case in Kansas is cited as supporting that view under our constitution. But we need not decide that question here. The court takes judicial notice of the fact that the Hugoton gas field in Kansas differs in many respects from any other gas field in the state. We think the order is not void because it applies only to the Hugoton gas field.

"Appellants contend the order contravenes the interstate compact to conserve oil and gas (G.S. 1935, 55-803 to 55-808 incl.) as extended. The point is not well taken. The declared purpose of the compact, as stated in Article II thereof, is 'to conserve oil and gas by the prevention of physical waste thereof from any cause.' And in Article III, after listing six particulars in which the states joining in the compact agreed to enact laws or to continue them in force for the prevention of waste, contains this language: 'The enumeration of the foregoing subjects shall not limit the scope of the authority of any state.' We see nothing in the compact that would prevent our state from enacting the statutes under which the Commission operated.

"Appellants contend the interim order complained of violates their existing contracts for the purpose of gas. The point is not well taken. Appellants obtain the gas which they pass through their pipe lines in one of two ways—by purchase or by production. The standard form gas purchase contract used by the appellants in the Hugoton gas field contains this clause:

> 'Contract subject to present and future orders, rules and regulations of duly constituted authorities having jurisdiction.'

"By this the parties anticipated modification of the contract by a duly constituted authority having jurisdiction. Under our previous holdings herein the Corporation Commission is such a body. The appellants get some of the gas from wells under ordinary gas leases with the owners of real property. These leases do not attempt to fix any price for the lessor's royalty. The pertinent provision in the lease reads:

> 'The leases shall monthly pay lessor as royalty on gas marketed from each well where gas only is found, one-eighth (⅛) of the proceeds if sold at the well, or if marketed by lessee off the leased premises, then one-eighth (⅛) of its market value at the well.'

"The result is the appellants have no prior contracts which will be violated by the order complained of here.

"Other points argued by the appellants have been considered and found to be without substantial merit.

"The judgment of the trial court is affirmed.

"PRICE, J. (dissenting): I am unable to agree to the result reached in the opinion written for the court and will state my views very briefly.

"In doing so I do not propose to debate the merits of the question whether the Commission should or should not have power to fix the price of natural gas at the *welhead* in the Hugoton or any other gas field.

As I see it the question is—*does it possess such power under the statute?* The Commission has only such powers as have been conferred upon it by the Legislature. Nowhere in the provisions of G.S. 1947 Supp. 55-701, 702, 703 and 704 do I find any such authority granted. In fact, at the 1947 session of the Legislature H.B. 129 specifically empowered the Commission '* * * to fix a minimum price at which gas may be purchased at the wellhead. * * *.' It is true that this bill, which passed both Houses of the Legislature was vetoed by the Governor and therefore did not become a part of our law—but, in my opinion it was definitely a legislative recognition of the fact that no such power previously existed. In the absence of such statutory authority I am unwilling to say that an administrative agency, board or commission possesses the power to do what was done here and for that reason I think the order of the Commission was unlawful and should be set aside.

"WENDELL, J., concurring in J. Price's dissent."